

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN BOB CLARK**, on February 10, 1995, at 7:00 AM.

#### **ROLL CALL**

##### **Members Present:**

Rep. Robert C. Clark, Chairman (R)  
Rep. Shiell Anderson, Vice Chairman (Majority) (R)  
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)  
Rep. Chris Ahner (R)  
Rep. Ellen Bergman (R)  
Rep. William E. Boharski (R)  
Rep. Bill Carey (D)  
Rep. Aubyn A. Curtiss (R)  
Rep. Duane Grimes (R)  
Rep. Joan Hurdle (D)  
Rep. Deb Kottel (D)  
Rep. Linda McCulloch (D)  
Rep. Daniel W. McGee (R)  
Rep. Brad Molnar (R)  
Rep. Debbie Shea (D)  
Rep. Liz Smith (R)  
Rep. Loren L. Soft (R)  
Rep. Bill Tash (R)  
Rep. Cliff Trexler (R)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** John MacMaster, Legislative Council  
Joanne Gunderson, Committee Secretary

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

##### **Committee Business Summary:**

Hearing: HB 382, HB 378, HB 388, HB 444  
Executive Action: HB 309 DO PASS AS AMENDED  
HB 323 DO PASS AS AMENDED  
HB 444 DO PASS AS AMENDED

{Tape: 1; Side: A;}

EXECUTIVE ACTION ON HB 309

Motion: REP. DUANE GRIMES MOVED HB 309 DO PASS.

Motion: REP. LOREN SOFT MOVED TO AMEND. EXHIBIT 1

Discussion: REP. BRAD MOLNAR asked why each health care provider was listed individually rather than just by the term, health care provider.

REP. SOFT explained the reasoning behind that decision.

John MacMaster read the current definition of health care provider in code.

REP. MOLNAR asked if there were more categories listed under the definition in code than were included in this bill.

John MacMaster said the intent in prior submissions of this bill to the committee was to confine the application of it to limited members of the health care field.

Vote: The motion carried 11 - 8 by roll call vote.

Motion: REP. DIANA WYATT MOVED TO AMEND. EXHIBIT 2

Discussion: REP. WYATT explained that the amendments would authorize the Insurance Commissioner to determine the results and to report what has happened in rate structure and occurrences.

REP. GRIMES felt this would give one of the strongest opponents opportunity to "get in the middle of the bill." He did not think it made sense to turn any control over to him and or to require something of him that isn't required of any other person who testifies. He said it was clear what would happen if rates do not go up; they will eliminate that section of the law.

REP. DEB KOTTEL said she heard during the hearing that the reason for this was to have doctors' insurance rates drop. The testimony was that it was not to lower health care costs. She read into the record portions of a letter from SEN. DEL GAGE, who chaired the Medical Malpractice Reform Committee. His opinion was that the committee could not determine how large a factor caps were in the reduction of rates in those instances where the rates did decrease. She felt that if this bill was an experiment to see if caps reduce insurance rates, then she thought they need to follow it by adopting this amendment.

REP. GRIMES said this bill is not an experiment. He said it was good tort reform which had been passed in other states.

**REP. WYATT** speaking on her amendment, said that there is currently no statutory authority to report loss experiences. She felt there is insufficient information in terms of Montana data to determine credible loss experiences here. She said the amendment does not preclude the bill's coming into effect or prevent the tort reform. It would merely give information to evaluate the bill's effectiveness.

**REP. GRIMES** believed there would be several groups and entities watching the effectiveness of the bill which would serve the same purpose. He did not believe it was wise to add it to the Insurance Commissioner's work load and believed that there would be plenty of data in two years from other sources.

**REP. SHIELL ANDERSON** asked the committee to vote against the amendment. He did not like it when departments try to buttress their responsibilities. He felt the amendment should have a fiscal note attached to it. If the commissioner's job is to monitor insurance, he did not understand why he could not do this anyway without a request for more rule making authority.

**Vote:** The motion failed 6 - 13 by roll call vote.

**Discussion:** **REP. WILLIAM BOHARSKI** said sometimes when a bill is passed like this, there can be questions from the court about why the legislature did it. He wondered if it would be appropriate to add some "whereas" clauses to show clear legislative intent. He remembered that is sometime done in tort reform bills.

**REP. GRIMES** felt that would not be a bad idea, but because of time constraints and the need for the committee to come into agreement about what those clauses would say, he did not agree that they should add them. He felt he would also have to research the other states' clauses. He did not see any problem applying this law. He asked if **REP. BOHARSKI** thought there might be a problem determining periodic payment schedules.

**REP. BOHARSKI** also did not think they should do it in committee, but was wondering if it was something they ought to think about. He said the court's response to bills limiting liability were unpredictable. He only wanted to propose it to the committee for consideration.

**Motion:** **REP. ANDERSON MOVED HB 309 DO PASS AS AMENDED.**

**Discussion:** **REP. DANIEL MC GEE** was concerned that the bill limited awards to injured persons but did not limit premiums or awards to attorneys. He understood the economic logic behind it. But he saw the only person being limited by it was the person suffering the loss.

**REP. ANDERSON** believed the attorneys' fees would be limited by virtue of the cap on the noncompensatory damages because they would only take a portion of a smaller amount.

REP. MC GEE said he did not believe they would compute their fee on the \$250,000 cap, but would also include compensatory, punitive, and non-compensatory damages in the computation. He felt the \$250,000 could be absorbed in attorney fees.

REP. LIZ SMITH felt the main crux of it was noneconomic damages in that it was something which could not be tied to a dollar amount. Therefore, she felt capping and periodic payments were where the support for the plaintiff was provided. Also, in that process there was a reduction of litigation time and a greater support for those incurring long-term economic damages. Because there was no dollar amount on noneconomic damages, it would be more up-front money generated to the plaintiff rather than to the attorney.

REP. MC GEE said his position was that a dollar amount cannot be assigned to pain, suffering, or reputation. He said they were dealing with non-tangibles and he wanted to see that the bill would guarantee reduced premiums or some positive benefit to the person incurring the loss rather than to an attorney.

REP. KOTTEL discussed some components involved in examining tort reform; i.e., identifying the problem, asking if the bill would solve the problem, and asking if in the attempt to solve it would more problems be created. She outlined the problem as stated in testimony as being medical malpractice crisis. She quoted from the 54th Interim Subcommittee Report On Insurance Issues which indicated that there is no medical malpractice crisis in Montana and that professional insurance for health care providers is available at competitive rates. It reported as well that claims are settled in favor of the defendant with those cases rarely being settled in the multi-million dollar range. **EXHIBIT 3**

She quoted from **SEN. GAGE'S** letter that it was his opinion that the reason the committee did not make any kind of recommendation regarding caps for noneconomic damages was that they did not have sufficient information to reach a conclusion that if caps were placed on noneconomic damages or on legal fees, that malpractice insurance premiums would be reduced.

However, assuming there is a problem, she referred to the above testimony to answer the second part of tort reform; i.e., would they solve the problem. Additionally, there was no proof that the number of physicians would increase as a result or that there was indeed a current shortage. In fact, **EXHIBIT 4** was entered as evidence that there is a steady increase in the numbers of active Montana physicians. The third problem was purported to be a lack of physicians in rural areas and no testimony was convincing that a decrease in rates would increase the numbers of doctors willing to practice in rural areas. Any evidence that it would decrease the amount of health care costs to the average Montanan was not presented at the hearing as she remembered it.

On the testimony that fewer than 4% of active Montana physicians are responsible for 40% of the claims and 60% of the dollars lost requiring compensation, she questioned that this would settle that problem. She questioned whether they would create more problems with this legislation. She gave examples to support her view as it related to noneconomic loss with persons who are not producing economically in the society.

**REP. BILL TASH** said the thread that runs under concerns with regard to health care costs is the absolute need for tort reform. Though he did not see this as a cure-all, he did see it as a step toward being containing some of the costs. He begged to differ with the viewpoint that there is no problem in recruitment and retention for physicians in rural areas; his experience proved otherwise.

**REP. SOFT** asked the committee to remember that in periodic payment through annuities, the attorney fees would be based on the current value of the annuity and not on the total amount. In effect, the attorney would receive less and as the annuity payments are made over the lifetime of the person with interest.

**REP. WYATT** rebutted **REP. TASH'S** statements by stating that in recent testimony it was learned that Montana ranks number three in the recruitment and retention of physicians out of Washington University. Montana is third nationally in retention for many reasons. Though there are under-representations in areas of rural Montana, some of those are for reasons which have no relationship to the bill.

**REP. MC GEE** proposed an amendment and described it to the committee. He felt the court should rule in context with the injured person as well as the insurance company.

**Motion:** **REP. MC GEE** MOVED TO AMEND HB 309 TO CHANGE "SHALL" ON LINE 26 TO "MAY."

**Discussion:** **REP. BOHARSKI** said, "These are people who have already been reimbursed for the actual loss due to an injury. The reason this is a shall, you are exactly right, so the insurance company and physician can come in and say, 'I need periodic payments. This is going to kill me if I have to put this kind of money out.' There are some things that need to be left to the discretion of the judge when a criminal case appears before his court .....". But he felt this was a decision the legislature had to make. Every state is trying to figure out a way to bring these costs down. If it is turned over to some liberal judges, he guaranteed they would never make it into a "shall" but would say they have to pay the whole amount up front. He strongly urged the committee's vote against the amendment because it would gut the second half of the bill.

**REP. GRIMES** said **REP. BOHARSKI'S** comments were absolutely right and that there is current language in the law which allows for

some periodic payments though they are never used because it is at the discretion of the judge. This would help stabilize the fact that they are going to be paid periodically. He felt the amendment would reverse his intention. This would allow the victims to be paid out of current value. He gave an example to support his statement.

**REP. SOFT** thought that payment up front caused insurance companies to carry large reserves, but periodic payments would alleviate that problem.

**Vote:** The amendment motion failed by voice vote.

**Vote:** The DO PASS AS AMENDED motion carried 13 - 6 by roll call vote.

**Informational Testimony:** A letter with accompanying documents was referred to in Executive Action and is included as **EXHIBIT 5**.

**EXHIBITS 6 through 24** are letters received after the hearing in support of HB 309.

#### **EXECUTIVE ACTION ON HB 323**

**Mr. MacMaster** read the proposed amendments to HB 323 and a companion bill, HB 232, to the committee for their information before action was entertained on HB 323. The two bills were essentially the same, except that HB 323 required a letter from the sheriff saying the bearer had a concealed weapons permit to be shown to the seller of the handgun. He explained the coordination instruction which would be included and the need for it.

**CHAIRMAN CLARK** discussed **REP. RYAN'S** proposed amendment to strike all of section 1 through line 16 and also on line 17 to strike, "a letter issued under subsection (1), the."

**Motion:** **REP. MC GEE** MOVED HB 323 DO PASS.

**Motion:** **REP. MC GEE** MOVED THE RYAN AMENDMENTS TO HB 323.

**Discussion:** **CHAIRMAN CLARK** noted that the word, "the," should remain on line 17.

**Motion/Vote:** **REP. MC GEE** MOVED A SUBSTITUTE AMENDMENT AS OUTLINED IN EXHIBIT 25. The motion carried 16 - 2, **REPS. HURDLE** and **SHEA** voted no.

**Motion/Vote:** **REP. BOHARSKI** MOVED HB 323 DO PASS AS AMENDED. The motion carried 15 - 3, **REPS. CAREY, SHEA** and **HURDLE** voted no. (**REP. ANDERSON** voted by proxy and **REP. KOTTEL** was absent at the time of the vote.)

HEARING ON HB 378Opening Statement by Sponsor:

REP. RICK JORE, HD 73, introduced HB 378 as a "get-tough-on-crime" bill as well as truth-in-sentencing. The intent was to deal with cases where a criminal is convicted for the second time and both first and second offenses were termed a crime of violence. The bill would give the jury the opportunity to recommend a sentence and it would provide that the offender serve the entire sentence and not be paroled or given time off for good behavior or have the opportunity for early release.

Proponents' Testimony:

Sharon Bakerson, Majority Against Child Molestation (MACeM), supported HB 378 by giving examples of cases where many acts against children had been committed while the perpetrator had been released back into society.

Opponents' Testimony:

None

{Tape: 1; Side: B}

Questions From Committee Members and Responses:

REP. KOTTEL asked the sponsor for the breakdown by percentage in terms of violent crime as to the number of those who go on to trial and how many are plead out.

REP. JORE did not know the percentage. He directed the committee to the fiscal note. The requirement to serve the entire sentence would not apply just to jury trials. If it were tried before a jury, the jury recommendation clause would kick in. It would apply to any offense where it was termed a crime of violence.

REP. KOTTEL asked if it were just a jury recommendation and not binding on the judge and the sponsor said that was true. He also mentioned that his intention was to keep the judge honest and to give the general public somewhat of an opportunity to have a say in the sentencing.

REP. MOLNAR observed that there was no delayed implementation date on the bill, yet an 80-bed housing unit would be needed which would take some time to build. He asked where these people would be housed according to the requirement in the bill for immediate incarceration.

REP. JORE said that was the downside of the bill. He recognized that a primary function of government is to punish criminals. With this bill incorporated into other bills during the session, he thought there was the recognition that they would have to do

something with the prison system. Though he did not like the numbers in the fiscal note, he was leaving it to the wisdom of the committee to decide. He discussed his understanding of the reasons behind the figures on the fiscal note.

**REP. MOLNAR** asked if this would just apply to people incarcerated after the enactment of this bill.

**REP. JORE** understood that it would not be retroactive.

**REP. MOLNAR** restated his question, and the sponsor said he thought there would be a challenge to a retroactive application.

**REP. KOTTEL** asked if the definition of violent crimes in the bill included sex offenses.

**Closing by Sponsor:**

**REP. JORE** closed with remarks referring to a general concern among the people that there is a need to be serious about how criminals are punished. He felt the bill could be applied in a positive fashion. He left it to the wisdom of the committee in incorporating it with others it would be considering. He felt this bill would be a worthwhile addition to the move toward an overhaul of the criminal justice system.

**HEARING ON HB 382**

**Opening Statement by Sponsor:**

**REP. BOB PAVLOVICH, HD 37**, submitted HB 382 to the committee describing it as a bill requested by the League of Cities and Towns which would limit the liability of a city or town for a defect in its sidewalk.

**Proponents' Testimony:**

**Alec Hansen, League of Cities and Towns**, supported and strongly recommended the passage of HB 382. He presented amendments to accomplish the purpose of including other jurisdictions and to expand the immunity protection to cover the state of Montana and counties. **EXHIBIT 26** He discussed the reasons for requesting the bill. He said it was not unlimited immunity, but it would provide some protection for cities, towns, counties and the state in an increasing number of suits over claims for sidewalk injuries. If it was a minor defect in the sidewalk, the jurisdiction would have some immunity protection. It also says that if there is a defect and the jurisdiction is not notified of the defect, they would also have immunity protection.

**Bob Worthington, Programs Administrator, Montana Municipal Insurance Authority (MMIA)**, presented statistics from insurance experience with these cases. He discussed the difficulties and



expense in adjusting these claims because they have to be done on site and included determining the variances in such things as weather changes. The difficulties in a maintenance process for the communities is the most important thing to recognize, he felt. He believed this bill would provide an avenue to establish a reasonable process to manage the sidewalk liability and allow for the development of standards.

**Ray Barnicoat, Risk Manager, Montana Association of Counties,** stood in support of the bill for the same reasons already stated.

**Bill Gianoulias, Chief Defense Counsel, Risk Management Tort Defense Division, Department of Administration,** supported the bill with the amendments. He particularly was interested in the fourth amendment which would delete lines 19 and 20.

**Tim Reardon, Chief Legal Counsel, Department of Transportation,** spoke in support of the bill as amended on behalf of the department.

**Bill Verwolf, City of Helena,** rose in support of the bill because it addressed the vagueness of current liability and clarifies responsibility for sidewalk repair.

**David Hull, Helena City Attorney,** agreed with the prior comments.

**Opponents' Testimony:**

None

**Questions From Committee Members and Responses:**

**REP. DEBBIE SHEA** asked what the term, "actual notice," meant.

**Mr. Hansen** believed it referred to actual notification of the defect, but did not know if it needed to be in writing.

**REP. SHEA** wondered if it should be in written form.

**Stanley Kaleczyc, Attorney for League of Cities and Towns,** said the way the bill was drafted, a person could call in to advise the governmental agency. Originally there was a written-notice provision, but they had thought that was too restrictive. The city would have to take responsibility under the bill as drafted to route it properly. The drafters would have no problem including a written notice provision in the bill.

**REP. GRIMES** asked if this clarified when a city or town is liable as well as clarifying when it is not liable.

**Mr. Hull** said that was correct that the purpose of the bill was to clarify. The governmental entity would have a standard of care and once they received notice, they would have an obligation to address the problem. They would not have ultimate

responsibility for the all of the sidewalk unless there was some way for them to know there was a problem.

**REP. GRIMES** asked what defines a town.

**Mr. Hansen** answered that a town must be incorporated. It is under the general definition, "incorporated municipality with 1,000 or less in population."

**REP. GRIMES** asked if he anticipated that this would result in additional litigation or more formal litigation. He was concerned how that would affect the small, incorporated Montana town with old sidewalks.

**Mr. Hansen** said it would affect Boulder in the same way it would affect Helena. If someone gives notice that there is a defect and it is repaired, a lawsuit is avoided. If they don't repair it and someone is injured, they are liable. Either way, under this law or under existing law, if someone is injured, there would be a lawsuit. A provision in this bill was that if they did not know about the defect, they would have some protection. The bill also defined a defect.

**REP. WYATT** questioned how line 14, subsection (1), which referred to negligent installation, would apply to a homeowner who hired a contractor to install a sidewalk and that was not done properly, and whether the contractor would be held liable.

**Mr. Kaleczyc** said in the proposed amendment, the negligent installation language would be struck. If the amendment were not adopted, the answer would still be yes, the contractor would be liable.

**REP. WYATT** asked about the homeowner's liability if the installation was not negligent, but maintenance around the sidewalk was cited as cause.

**Mr. Kaleczyc** said Montana law is confusing regarding this because the city is the ultimate owner and ultimately responsible for the sidewalks within the city. Under various statutes which cities and towns have enacted, adjacent landowners have responsibility to maintain the sidewalks. If the property owner fails in that responsibility, the responsibility defaults to the city. This bill attempted to address that ultimate responsibility.

**REP. WYATT** asked if both the homeowner or business would be liable, and so both would be sued in a negligent situation.

**Mr. Kaleczyc** said both are sued and in some instances the adjacent property owner will be held not to be liable if the property owner did not do anything, for instance when frost heaves caused the defect. In other instances where tree roots over time had caused the sidewalk to heave up, the courts have at times held that there is a dual responsibility of both property

owner and the city and they have shared liability. It becomes fact specific.

**REP. MC GEE** asked what the scientific basis was for the 1.5-inch specification as opposed to .75-inch or 2-inch elevation.

**Mr. Kaleczyc** said there is no scientific basis, but they have reviewed legal literature and court decisions from around the United States and 1.5-inch safe harbor in statute in the state of Illinois. More importantly, decisions of state courts have reflected 1.5 inches as an average number where state courts in other jurisdictions had determined a safe harbor.

**REP. AUBYN CURTISS** asked what the assessment would be for extra costs to the state for contracting for maintenance of the additional sidewalks.

**Mr. Reardon** said the proposed amendments strike that section. Had that amendment not been proposed, they put together some figures as to the what annual cost to the department would be to maintain those sidewalks. They estimated \$2.7 million yearly.

**REP. CURTISS** reflected on the testimony that under Montana law, cities are responsible for sidewalks and asked if they passed this, would it be in conflict with another statute.

**Mr. Reardon** was not aware of any conflict.

**Mr. Kaleczyc** said there was no conflict and in the codification instructions in the bill, it would fit into title 7, chapter 14, in the 4100 series.

**REP. KOTTEL** asked about communities where contiguous property owners are responsible for their sidewalks. If a notice should be tendered and the city made the repairs, would the city have a right to either charge the contiguous property owner for the cost of the repairs or place a lien on the property for the cost of the repairs.

**Mr. Kaleczyc** replied that under some city ordinances, there may be some ability to charge back the adjacent property owner. That is not uniformly adopted by all cities or towns in the state.

**Closing by Sponsor:**

**REP. PAVLOVICH** closed asking the committee to adopt the amendments. He submitted **EXHIBITS 27 and 28** for the committee's information for executive session.

{Tape: 1; Side: B; Approx. Counter: 38.0}

HEARING ON HB 444Opening Statement by Sponsor:

REP. HAL HARPER, HD 52, proposed HB 444 as a means of dealing with child custody proceedings and child [custody] modification proceedings. It added two rebuttable presumptions that apply as contrary to the best interests of the child which are:

1. Custody should be granted to the parent who has provided most of the primary care during the life of the child, and
2. A custody action brought by a parent within six months after the child support action against that parent is vexatious.

Two rebuttable presumptions are added that:

1. Knowing failure to pay birth-related costs, if that person is able to pay, is not in the best interests of the child, and
2. Failure to pay child support, if that person is able to pay, is not in the best interests of the child.

He said the second part of the bill dealt with visitation rights and modification of a custody decree by basically broadening two definitions. He directed the committee to where these could be found in the bill and how they broadened the definitions to apply to any person residing in the household other than the non-custodial parent.

Proponents' Testimony:

Robert Mahr spoke in support of the bill and described how he was involved in a situation where his former wife had moved their daughter into her household with a sex offender. He said he had been unable to gain help from the agencies he had approached and described the frustrations in changed court dates and loss of contact with his daughter. This bill would allow his case to be heard and potentially remove his daughter from the potential danger.

Renae Mahr described the above situation in more detail. She believed that the amended bill would ensure that they would be heard in a reasonable time frame and would facilitate the resolution of the contested custody issues.

Vivian Marie, Attorney, Montana Legal Services, presented written testimony. She said she has difficulty explaining to clients that they cannot connect the issues of visitation and non-payment of support. She said the judge should be able to consider that issue in determining how much the parent has the child's interests at heart in custody hearings. **EXHIBIT 28**

**Neil Haight, Legal Services**, gave his perspective as former Fergus County Attorney. He felt it addressed the safety of a child both from physical abuse and from the tug-o'-war that happens in many dissolution cases. He felt it also dealt with continuity of the children's care and well being.

**Sharon Bakerson, MACeM**, said HB 444 would definitely be in the best interests of the innocent children. She said there are children living in custodial homes where step-parents have been convicted of crimes and sexual abuse of children and the non-custodial parents had been trying to gain hearings in some cases for over a year and more. She also described pending cases where children are being sexually abused and are physically and mentally abused by a parent, but the hearings have been repeatedly postponed. Children have a right to speedy hearings just as adults have a right to speedy trial, she felt.

**David Hull, Helena City Attorney**, reported that in his private practice he does a certain amount of domestic relations work representing parents in custody cases. He supported the bill in general, but in particular supported those provisions in 40-4-217 (6) and (8), MCA.

**Mary Alice Cook, Advocates for Montana's Children**, strongly voiced support for HB 444.

**Opponents' Testimony:**

None

**Questions From Committee Members and Responses:**

**REP. SOFT** asked how this bill will speed up the process.

**REP. HARPER** explained how the current law deals with filing for custodial hearings and the time frames involved. He then applied the language of the bill to demonstrate the change.

**REP. SMITH** asked how the parent would be defined in the statute.

**REP. HARPER** was sure the relationship was defined either through visitation proceeding or custody proceedings. These sections deal with the modification of a custody decree or visitation.

**REP. SMITH** asked for clarity regarding the other person residing in the home as stipulated in the bill.

**REP. HARPER** said this person is termed a noncustodial parent, but has visitation rights. It addressed a situation where the non-custodial parent has not been convicted of a crime, but that person's boyfriend, girlfriend or other person may be posing a danger to the child.

{Tape: 2; Side: A}

REP. MC GEE was concerned with the definition of primary care and wondered if the one who feeds the child would be considered as having primary care.

Mr. Hull said his concept of primary care was a more expansive concept than covering the one who is there on a regular basis to provide care.

REP. MC GEE asked if primary care could include the mother feeding the child.

Mr. Hull said that was correct.

REP. MC GEE asked if the father who works to buy the food and provide the other things could be considered the primary care giver.

Mr. Hull said that was not usually the case. In reality the courts usually recognize the mother as the primary care giver.

REP. MC GEE asked if the bill was worded currently in such a way that custody would be given to the mother in any case.

Mr. Hull responded, "Not necessarily because if the primary care hasn't been adequate and the best interests of the child are not being served, then the court has an obligation to look into that and change custody....."

REP. MC GEE asked if this bill were to pass, would it add the argument for the best interests of the child, which is not currently in statute.

Mr. Hull answered that that was not correct, because best interests of the child is already in the criteria. It just establishes some presumptions that the parties need to address in a noncustodial parent's case if the other parent had been determined to be the primary care giver, they have to overcome that burden. In reality that burden has to be overcome anyway. The one who is dealing with the child on a day-to-day basis is the one the experts think should be the primary parent.

REP. CHRIS AHNER asked if the parent had to be present at the court for a contested custody hearing.

Mr. Hull said she would if she were going to present testimony. He said that if this bill had been in place when the case which was presented in testimony occurred, the hearing would have taken place before the parent left the state with the child. The delay allowed the parent to leave the state.

REP. AHNER asked what kind of cooperation there was between states.

Mr. Hull described what those were.

Closing by Sponsor:

REP. HARPER closed.

CHAIRMAN CLARK set a 30-minute time limit for witnesses on each side for the hearing on HB 388. He then relinquished the chair to VICE CHAIR WYATT.

HEARING ON HB 388

Opening Statement by Sponsors:

REP. BOB REAM, HD 69, presented HB 388 to the committee. His opening remarks are in written form. EXHIBIT 29

REP. JOHN BOHLINGER, HD 14, spoke in support of HB 388 for the same reasons he supports the constitutionally guaranteed rights which protect all citizens' freedoms from discrimination because of race, creed, religion, color, sex, physical or mental disability, age or national origin. He said that HB 388 added sexual orientation. He said he had never met a homosexual who had made a conscious choice about his or her sexual preference. He reported that scientific evidence had been introduced that would suggest that it is a genetic disposition and not a matter of choice. He urged the committee to vote in support of HB 388.

Proponents' Testimony:

David Orendorff, United Methodist Pastor, read his testimony in favor of HB 388. EXHIBIT 30

*{Tape: 2; Side: A; Approx. Counter: 23.0}*

Sandra Hale, Executive Director, PRIDE, supported HB 388. EXHIBIT 31

REP. JOAN HURDLE, HD 13, rose in support of HB 388. EXHIBIT 32

Darrell Holzer, AFL-CIO, encouraged the support of HB 388. He quoted from the long-standing policy of the more than 16 million members of the national AFL-CIO regarding the issues of discrimination based upon sexual orientation. Basically it said that workers were to be judged on their work and not on irrelevant criteria that addresses their private lives.

Kate Mc\_\_\_\_\_, resident of Bozeman (her name was illegible on the sign-in sheet), testified to the discrimination of people in employment on the basis of their sexual preference. She was not a victim of that discrimination, but was a witness to it.

Erik Henderson, presented his testimony in support of HB 388. EXHIBIT 33

**Christine Kaufmann, Director, Montana Human Rights Network,** stated the mission of the organization and submitted written testimony in favor of HB 388. **EXHIBIT 34**

**Suzanne Grubaugh** introduced her partner, Carol, and shared her written testimony with the committee. **EXHIBIT 35**

*{Tape: 2; Side: A; Approx. Counter: 45.0}*

**Carol Narrance** said she was a lesbian woman in support of HB 388 and read a letter from **Carl Donovan**. **EXHIBIT 36**

**Corky Smith** included her testimony in support of HB 388 as the mother of a gay son. **EXHIBIT 37**

**Connie Geiger** presented a letter from an anonymous person who feared discrimination in the work place. **EXHIBIT 38**

**Linda Gryczan, Montana Women's Lobby,** gave written testimony to the committee. **EXHIBIT 39**

**Sandra Boggs** submitted her written testimony in favor of HB 388. **EXHIBIT 40**

**Scott Crichton, Executive Director, ACLU,** supported HB 388 and said his testimony addressed the legal rationale behind the bill. **EXHIBIT 41**

**Beth Wheatley** urged passage of the bill.

**Informational Testimony:**

A letter of appreciation from proponent, **Suzanne Grubaugh** is submitted. **EXHIBIT 42**

**Opponents' Testimony:**

**Laurie Koutnik, Executive Director, Christian Coalition of Montana,** spoke in opposition to HB 388 and submitted written testimony. **EXHIBIT 43**

**CHAIRMAN CLARK** resumed the chair.

**Sharon Hoff, Montana Catholic Conference,** presented testimony in opposition to HB 388. **EXHIBIT 44**

*{Tape: 2; Side: B.}*

**Arlette Randash, Eagle Forum,** rose in opposition to HB 388 and submitted written testimony. **EXHIBIT 45**

**CHAIRMAN CLARK** asked the opponents to yield the balance of their time to the remaining proponents. They had no objection.



Proponents' Testimony Continued:

**Corky Smith** presented testimony previously submitted in written form.

**Sylvia Erickson** testified about her experience as a mother of a homosexual son and submitted the written testimony of her husband and her son as well as her own. **EXHIBITS 46 - 48**

**Connie Geiger** read excerpts from previously submitted testimony.

**Linda Gryczam** completed her testimony as previously submitted.

**Julia Weddle** presented testimony by the University of Montana Law School Chapter of the ACLU. **EXHIBIT 49**

**CHAIRMAN CLARK** thanked the opponents for their generosity in giving their remaining time for the additional testimony for proponents of HB 388.

Informational Testimony:

A letter is included from **Dallas Erickson, President, Montana Citizens for Decency through Law, Inc.** **EXHIBIT 50**

Questions From Committee Members and Responses:

**REP. SHEA** asked **Ann MacIntyre** if she was aware of a three part test for specially protected classes mentioned by **Ms. Koutnik** in her testimony.

**Ann MacIntyre, Administrator, Human Rights Commission,** said she was not aware of any legal test required to put any particular civil rights protection into the law.

**REP. SHEA** asked if homosexuals were already protected from discrimination.

**Ms. MacIntyre** answered that they were not protected from discrimination in employment, housing, public accommodations or the other areas listed in the Human Rights Acts.

**REP. SHEA** asked if this bill would allow gays or lesbians to be married or to adopt children.

**Ms. MacIntyre** said because the bill does not address the functions of government or government services, the answer would be no. She was not sure that even if government services were included that the answer would automatically be yes. Since they were excluded, she thought she could categorically say no.

**REP. SHEA** asked if the bill granted special rights.

**Ms. MacIntyre** did not view any of the civil rights laws in Montana or in the United States as according special rights; therefore, she did not agree with the contention that this bill would somehow afford special rights.

**REP. LINDA MC CULLOCH** asked **Mrs. Koutnik** to share her views on the protection of police dogs compared with her views on the protection of the citizens of Montana.

**Mrs. Koutnik** said she was present for the hearing on the protection of police dogs and would have agreed with the passage of such a bill. She personally believed there are already statutes on the books to address malicious intimidation, malicious harassment, assault, arson, stalking or any kinds of crimes which could be committed against people simply because someone else was uncontrolled in their behaviors.

**REP. MC CULLOCH** compared the freedom she would have to take her dog into a motel room with the denial of accommodations to a person based upon their sexual orientation and asked if that was fair.

**Mrs. Koutnik** did not believe that people are being denied accommodations because of sexual orientation unless someone was making an issue out of it. There would be no way to determine the sexual preference of someone wanting to rent the room unless that person disclosed it. She said prostitution goes on and there are rooms willingly made available for that.

**REP. MC CULLOCH** said without this in the law, it is possible that someone could be denied access to a motel, apartment, or restaurant.

**Mrs. Koutnik** replied that although it was possible, this was bad legislation because it is unconstitutional.

**REP. MC CULLOCH** asked if she understood **Mrs. Koutnik** to have said that homosexuals were not discriminated against because they have a higher average income than heterosexuals.

**Mrs. Koutnik** had stated that one criteria for being disadvantaged is being unable to take care of themselves. She said she was stating that nationally they are not an economically disadvantaged group.

**REP. MC CULLOCH** asked how they could justify worrying about what two consenting adults are doing in a bedroom when they have so many heinous crimes against children and other folks.

**Mrs. Koutnik** said they did not bring this piece of legislation before the committee. She submitted that this was bad law "based simply on how someone chooses to perform sexually to give them special right protection especially when that behavior is against the law in the state of Montana."

**REP. MC CULLOCH** asked **Mrs. Koutnik** to have **Mrs. Randash** provide written documentation to supplement her testimony that homosexuals are not discriminated against.

**REP. HURDLE** asked **Mrs. Koutnik** to elaborate on her statement that AIDS is history's first politically correct disease.

**Mrs. Koutnik** said, "It is well known that when the HIV/AIDS epidemic broke out that this particular disease was not treated like any other communicable disease or any STD disease that we currently have on the books. It was in fact protected because of the confidentiality of those that, primarily because of their sexual behavior, have acquired this disease. It became politically correct because those individuals with a lot of political muscle influenced those in positions to set up studies, hearings, or whatever, or even good sound medical practices. That's basically it, it is a politically correct disease, not to treat it like any other communicable disease."

**REP. WYATT** asked **Mr. Crichton** to respond to the allegation that this legislation was unconstitutional.

**Mr. Crichton** replied that he could not give a legal opinion, but it was his sense from his interpretation of the Constitution on both the state and federal levels, that there are strong constitutional arguments to include this in human rights protection.

**REP. WYATT** referred to a comment in the testimony of the Montana Catholic Conference regarding the concern about creating a new protected class. She understood from testimony that this would not be a separate class, but that people should not be discriminated against for any particular thing they might bring to society and asked if she was misinterpreting it.

**Mr. Crichton** did not think she was misinterpreting it. He thought the concerns centered on harassment or dislocation in housing or employment. He thought this would bring protection in those areas. He commented that people are concerned about coming to Montana because of perceived hostility toward gay and lesbian people.

**REP. WYATT** asked **Christine Kaufmann** to respond to the same question.

**Ms. Kaufmann** did not think there was a concern about creating a new protected class of people. She speculated that the concern of the Catholic Conference is what they perceive as "getting the foot in the door" in the Human Right Act though the bill is very specific what sections of the law it would affect. She believed that they were worried about it promoting gay marriages or hiring gay people in the church. She said the Catholic Church does not follow the Human Rights Act in their discrimination in hiring priests.

{Tape: 2; Side: B; Approx. Counter: 36.2}

REP. MOLNAR wanted to discuss the administration of the law if the bill were enacted. He asked what occurs when a complaint is received that someone is discriminating in rental practices.

Ms. MacIntyre addressed the process which is followed by the commission in investigation, determination of cause and resolution.

REP. MOLNAR asked how it is resolved between the person who brings the charge and the alleged violator.

Ms. MacIntyre said they make a real effort as a neutral entity to resolve the complaint and provide the forum for mediation between the parties. They try to avoid legal processes.

REP. MOLNAR wanted to know about the process when the charges involve newspapers.

Ms. MacIntyre did not recall large numbers of complaints filed against newspapers though there had been some settlements involving unlawful ads which resulted in monetary awards.

REP. MOLNAR asked, "If this were to pass with amended in language, would not any group, for instance PRIDE, Montana Human Rights Network, whoever would be involved in this sort of issue, be able to bring these suits against landlords, newspapers, however they decided to bring their charge and then would not the newspaper or the person who was renting the house or whatever, as is now the case, find it more beneficial to give \$4,000 - \$5,000 instead of a \$10,000 suit and write "X" amount of words as the newspapers currently do?"

Ms. MacIntyre replied that she imagined that groups could bring lawsuits to the commission in an attempt to resolve them. She said she did not know what he was getting at.

REP. MOLNAR asked if Ms. Kaufmann was surprised to find out that if this were to pass, they [her organization] could bring suits against anybody they wanted to through the commission and it would be fairly common for them to settle with the organization on a financial basis directly as opposed to directly through the commission.

Ms. Kaufmann said that thought had not occurred to her. They wouldn't be able to bring a suit against anybody unless they violated the law. REP. MOLNAR corrected the word, "suit," to "charge." and she continued by saying that they would only be able to bring a charge against someone who violated the law, for example refused housing to a gay man or lesbian. She believed as an organization they would have the ability to do that. She was aware that sometimes settlement was reached in terms of monetary payment with fair housing rules.

**REP. MOLNAR** said he was perplexed by section 7 which dealt with discrimination in education and asked if it had occurred to the sponsor that there are many private schools which would be reluctant to be forced to allow homosexuals into their school as a violation of their religious rights.

**REP. REAM** was not sure it would apply to private schools. He deferred to **Ms. MacIntyre** to answer it. His opinion was, however, that it was absolutely wrong.

**REP. MOLNAR** read the section that concerned him and asked if there would be a "showdown" in the courts on that issue.

**Ms. MacIntyre** expected that there could be. The current educational institution is a defined term which is a public or private institution including an explicit variety of institutions. However, she said she would expect that even though this defense is not stated in the statute, there would still be a basis for an educational institution to claim a First Amendment type defense to a complaint under this section.

**REP. KOTTEL** had a series of questions of **Mrs. Koutnik** about what she believed to be acceptable behavior and the government's role with regard to people and their sexual orientation. She wanted to know how **Mrs. Koutnik** could rationalize nonsupport of this bill when she seemed to believe that government should not be intrusive into people's lives and that there were laws on the books regarding sexual issues which were not being currently applied.

**Mrs. Koutnik** said she understood that those laws exist on the books as a measure to keep that type of behavior from being "in your face, so to speak."

**REP. KOTTEL** re-asked her question, "Why would it be okay, and in fact, tacitly approved by government to allow others to discriminate against someone for activity done in private."

**Mrs. Koutnik** referred to the statement in her testimony that this has been a longstanding issue which has been upheld by Judeo-Christian moral codes that it is totally unacceptable. "Maybe that doesn't set well for those who don't hold to a Judeo-Christian code, but this county was founded on a Judeo-Christian ethic and I still abide by Judeo-Christian ethic[s] and in my estimation that is what this law has been derived from over the years."

**REP. KOTTEL** asked, "So your statement is, then that we are asking for government law that follows religious beliefs?"

**Mrs. Koutnik** answered, "No, **REP. KOTTEL**, I believe I am asking us to uphold the law and our rights and our Constitution as prescribed by our founding fathers. Our Constitution was meant for all citizens of this country and I believe that, regardless

of our sexual orientation, we are all citizens and guaranteed those rights. But I also believe that there are some criteria, .....that would characterize whether there was something that was acceptable and this does not fall within the definition of acceptability."

*{Tape: 2; Side: B; Approx. Counter: 53.5}*

REP. WYATT asked if there were gay and lesbian teachers in K-12 public and private schools and possibly in the university system.

REP. REAM said he was sure there were.

REP. WYATT asked if when they function within the realm of appropriate behavior and they are good instructors, should they be fired from their job.

REP. REAM said it has no relevance to their qualifications and ability and should not be considered part of their employment.

REP. WYATT asked if this legislation was drawing a line between behaviors that "we" don't know about or genetic dispositions of a person, their sexuality; and as long as "we" know nothing about their sexuality, they cannot be discriminated against. But once "we" know that "we" disapprove of their sexual orientation, she asked if it was correct that they could be discriminated against.

REP. REAM said they had been discriminated against as was demonstrated during testimony.

REP. WYATT asked if the intent were to not make a value judgment or state or federal determination that this was immoral behavior, but instead just to apply the same kind of protection in terms of discrimination for employment and other protections based upon behaviors which are exhibited obviously rather than those that apply to sexual orientation. "Once you divide the line between knowing what someone's sexual orientation is, you can discriminate against them. As long as you do not know that, you cannot discriminate against them, correct?"

REP. REAM said that was correct. He felt it was important to recognize that and that the opponents to the bill had confused the civil rights intent and impact of this legislation with endorsement of non-heterosexual life styles.

REP. BOHARSKI asked if this meant that an employer could not choose to not hire someone because they were a homosexual even though the activities of homosexuals in the privacy of their own bedroom is a felony in the state of Montana.

REP. REAM said that was correct.

**REP. BOHARSKI** then asked, "If in my place of employment I refuse to hire someone who is a pedophile, even though I have never seen him sleep with a child, should I have the right to discriminate against him?"

**REP. REAM** replied, "I think in that case if the employment involved working with children, yes, I don't know if you were here ..... at the time that I opened, but I suggested language for clarification on sexual orientation that has been used in the Minnesota statutes or the other states that have similar legislation where it specifically excludes pedophilia as ..... under the definition of sexual orientation."

**REP. BOHARSKI** asked why they would want an amendment like that if "this is solely a matter of one person discriminating against someone in the place of employment, which according to you I don't have a right to do, based upon their sexual orientation whether it is a felony or not."

**REP. REAM** understood the question to be why he would want to have a definition of sexual orientation. The only reason is that some individuals are trying to confuse or add in pedophilia as part of sexual orientation. He specifically thought it should be excluded from the definition.

**REP. BOHARSKI** said he was trying to clarify whether it seemed to the people in the committee room that it was all right to discriminate against someone who was known to be a pedophile even though the person discriminating had never seen them engaged in sexual activities with children; and that it was all right to discriminate against them even if the sexual activity was with a consenting minor of 15. It seemed to him that they were saying that it wasn't legitimate to discriminate against someone who was a known homosexual, when homosexuality is a known felony. He said he did not understand the difference between the two.

**REP. REAM** said he did not say it was all right to discriminate against somebody because they were a pedophile. "You said you were the employer, I am not the employer. That is your judgment. All I am saying is that I was excluding pedophilia under the definition of sexual orientation."

**REP. BOHARSKI** said by excluding pedophilia from the bill, the sponsor would be saying that it would still be authorized in the state of Montana to discriminate against a pedophile even though he had not seen that person engaged in a felony act. He said the remainder of the bill would make it illegal to discriminate against a homosexual even though he had not seen them engaged in that illegal felony act. He asked if that was correct.

**REP. REAM** said what was correct was that the bill intended that there would not be discrimination against individuals based on sexual orientation and pedophilia is excluded from that definition of sexual orientation.

REP. BOHARSKI asked why.

REP. REAM said it was because of people who were objecting to including that [pedophilia] within the definition, and there were probably some reasons depending upon the place of employment and the kind of employment for excluding pedophilia.

REP. BOHARSKI said the sponsor had hit on the reason why he would oppose the bill, because he believed that just as pedophilia is an immoral activity that is not conducive to a proper society, so did he believe the same thing about homosexuality. Both require the same playing field when it comes to Montana law, both are felonies and that was why he believed the bill crossed over the line.

REP. REAM said he had the right to believe that and to vote against the bill. He strongly disagreed that the two were equivalent. He believed the testimony demonstrated that it [sexual orientation] was not a matter of choice.

REP. MOLNAR said previous witnesses had agreed that quite often the cases handled under this statute currently generated situations where people set up a company for the purpose of seeking out ads and then filing complaints and then settling out of court because it was cheaper. He asked what sorts of safeguards might be necessary to ensure that people are not deluged with very costly defensive actions that instead become settled with the person who found grounds under the new additions to the law being proposed.

*{Tape: 3; Side: A}*

REP. MOLNAR repeated his statement and question. He said that some volunteer groups had set up, for the purpose of seeking out discrimination particularly in housing, situations where they will look through the want ads and try to find objectionable language and then claim they were offended, file the charge and settle with the newspaper out of court, because it is cheaper to do that and also they will demand that "X" amount of words be written on this during a certain course of time. He asked what safeguards might be necessary to keep employers, landlords, school and all the other groups affected by this from the harassment losses.

REP. REAM questioned whether people are going to file lawsuits frivolously on this basis. He said that from the testimony people would not come out of the closet just to do a lawsuit like this.

REP. MOLNAR clarified that they are not lawsuits, but are charges brought to the commission.



**REP. REAM** said he did not know of any more safeguards than there are for any of the other categories listed in the Human Rights Act.

**REP. MOLNAR** said it is easy to tell a person's race, color, age, physical or mental disability. How to discover a person's sexual orientation and how to defend that it wasn't your basis for a decision was a problem.

**REP. REAM** didn't think it was going to be a problem. He said a representative from the commission should be asked how they will deal with it.

**REP. MOLNAR** asked if he applied for work at the sponsor's business and was turned down and if he were wearing a PRIDE button and did not get the job, and filed a complaint, how would the sponsor as an employer defend that that was not the basis for the decision.

**REP. REAM** said the example was a frivolous charge and he would have to have more basis than simply wearing a pin. Those cases must be documented carefully. He gave his own supporting argument.

**REP. SHEA** asked **Ben Erickson**, whose written testimony was submitted by his mother earlier, to share what life was like for him being a young male homosexual.

**Ben Erickson, Montana State University Freshman**, read his testimony.

*{Tape: 3; Side: A; Approx. Counter: 8.5}*

**CHAIRMAN CLARK** asked if the sponsor would object to the committee inserting the word, "knowingly," in the bill before words like, "refuse or discriminate." There is no way of telling that someone is homosexual from looking at them, but as he saw the bill, it didn't matter.

**REP. REAM** deferred to **Ms. MacIntyre**.

**Ms. MacIntyre** said the burden of proof under this act is with the complainant who would have to show that the employer or housing provider knew of the sexual orientation and further would bear the burden of showing that they in fact acted on that knowledge to deny the housing or employment. **REP. MOLNAR** had asked how the employer or housing provider would defend against a complaint like that and she said the only element of a defense would be to articulate a legitimate non-discriminatory reason for the action.

**CHAIRMAN CLARK** asked if that meant that including "knowingly" would not harm the intent of the bill.

**Ms. MacIntyre** did not think so, but would want to be able to look at the word as it related to the existing statutory provisions because of certain work sharing relationships with the U. S. Department of Housing and Urban Development and the Equal Employment Opportunity Commission.

**Closing by Sponsor:**

**REP. REAM** closed by reading a portion of the Gettysburg Address which highlighted equal creation and the words of our founding fathers. He addressed some of the opponents' testimony and felt they were missing the point. He said he was not condoning any particular life style or behavior. He said it was not an unconstitutional bill. The comments that homosexual incomes are roughly \$10,000 higher than for heterosexuals were irrelevant in his opinion. He heard contradictions in the testimony that loss of income and productivity occurs because of homosexuality. He pointed out that the largest and fastest growing group of individuals with AIDS are heterosexual females, not homosexuals. Then he addressed the fears raised by the Catholic Conference. He said that the statement that homosexuality is a choice is absolutely wrong. He then stated his own religious beliefs and history. He believed that homosexuality was condoned by Christians in the time of Paul at Corinth and the opposition to it came after that time. He felt it was a longstanding orientation that legislation and other methods would not eradicate. His final comment was that there is a difference between pedophiles and homosexuals in that pedophiles victimize children where homosexual behavior is consensual in nature in relationships between individuals.

**CHAIRMAN CLARK** commended the witnesses for their respectful behavior and again thanked the opponents for relinquishing their time to the proponents.

**EXECUTIVE ACTION ON HB 444**

**Motion:** **REP. WYATT** MOVED HB 444 DO PASS.

**Discussion:** **REP. MC GEE** argued against the bill because of the definition of primary care giver.

**Motion:** **REP. MC GEE** MOVED TO AMEND HB 444 BY STRIKING ON PAGE 1 SUBSECTION (3) (A) AND (B) WHICH EXTENDED TO PAGE 2.

**Discussion:** **REP. MOLNAR** did not understand the rebuttable presumption concept and asked for an explanation line for line.

**REP. MC GEE** said it meant, "you are guilty until found innocent." He said it is the presumption of law that if you meet these particular criteria you are in fact guilty and must prove yourself innocent.

**REP. MOLNAR** continued with his clarification.

**REP. ANDERSON** said that rebuttable presumption did not include the terms, "guilty and proven innocent," because there are differing standards of proof in overcoming a rebuttable presumption which

he believed was a preponderance of the evidence which is 51% of the evidence rather than beyond reasonable doubt.

**REP. MOLNAR** asked if it was then saying that if the mother was the primary care giver, and the father wanted to raise an argument, that that is not a good enough reason solely to grant custody. This would not give him the right to raise that objection.

**REP. KOTTEL** supported **REP. MC GEE'S** amendments. Rebuttable presumption says that if both parents are absolutely equal in ability to take custody of the child, the one that is the primary care giver will get the child rather than the other. If they first say that the mother or the father is the primary care giver, then the burden shifts to the other party to show that it would be in the best interests of the child to go to them. The shift of burden is just preponderance of evidence by 51%. She thought lines 28 and 29 penalized males or other wage earners who are good parents and gave an unfair advantage to someone simply because they were the parent at home.

**REP. MOLNAR** asked how that differed from the current practice or was this just legitimizing it for the judges.

**REP. KOTTEL** said that was what she thought they were doing.

**REP. BILL CAREY** asked why they couldn't keep (b) under subsection (3).

**REP. MC GEE** said he had a problem with the fact that it put an onerous tone in the bill and believed it was unnecessary. He returned to testimony on the rebuttable presumption to support his amendment.

**REP. ANDERSON** agreed that both (a) and (b) should come out of the bill.

**REP. GRIMES** supported the amendment.

**REP. MC GEE** shared a story which substantiated the amendment.

Vote: The motion carried, 18 - 1, **REP. MC CULLOCH** voted no.

Motion: **REP. BOHARSKI** MOVED HB 444 DO PASS AS AMENDED.

**Discussion:** REP. MOLNAR reviewed the rebuttable presumption concepts on page 2, lines 2 through 6 and asked why they were included in the bill.

**Motion:** REP. KOTTEL MOVED TO AMEND BY INSERTING AFTER LINE 23, SUBSECTION (H) TO READ IDENTICALLY TO LINES 3 AND 4 ON PAGE 2. CREATE SUBSECTION (I) IDENTICAL ON PAGE 2, LINES 5 AND 6.

**Discussion:** REP. MOLNAR said if all that was left in the bill is telling the court that it cannot consider what they have always considered, he did not know why they would tie up the time on the House floor and in the Senate doing that.

REP. KOTTEL said that also left in the bill were custodial issues and visitation issues.

REP. MOLNAR asked what advantage to society there is to putting it in legislation when the judge already has discretion.

REP. KOTTEL said she did now know that the court does consider the two issues in determining the best interests of the child. Her belief was that if the court would consider them, they would be violating statute. The statute is clear that they can only consider issues (a) through (g) in determining the best interests of the child. So this bill would make a substantive change.

REP. MOLNAR thought they should also include that it was in the best interests of the child for the custodial parent not to unreasonably deny access to the other parent.

REP. KOTTEL agreed but said that this bill did not determine how parents should raise their children, but it would only determine who should get custody of the child and then determine visitation rights.

REP. SMITH felt that the amendment would be enough to request that they weigh ability to pay child support or financial obligations before that was taken into consideration.

John MacMaster commented that the committee should be aware that they were talking about custody between the two parents and they were looking at certain things between the parents. He suggested wording the amendment to reflect that properly.

REP. GRIMES had questions about the wording changing the intention of the bill and REP. KOTTEL said her amendment was conceptual and that Mr. MacMaster would adjust it.

REP. GRIMES planned to vote for it but did not have enough information even yet.

REP. ANDERSON did not like the amendment and asked how they would know when they were determining custody if a parent is able for

paying child support. He did not see how knowing whether the birth costs were paid for was going to help the court decide which parent was the best parent to have the child.

REP. GRIMES asked if that allowed for one more factor to be contested by either party.

**Motion:** REP. BOHARSKI MOVED A SUBSTITUTE AMENDMENT TO DELETE SECTION 1 IN ITS ENTIRETY (THE NEW LANGUAGE).

**Discussion:** REP. KOTTEL said custody determination does not take place only at the time of dissolution. She said that section would be important if there was a later change of custody action. She felt the failure to pay birth costs by either parent, if able to pay, is a clear "walking-the-talk" issue thus another objective fact the judge could consider.

REP. MC GEE asked if the amendment addressed striking section 4 at the top of page 2 and found that to be correct.

**Vote:** The motion (on the Boharski amendment) failed on a tie vote, 9 - 9, by roll call.

**Vote:** The motion (on the Kottel amendment) carried 16 - 2, REPS. ANDERSON and SOFT voted no.

*{Tape: 3; Side: A; Approx. Counter: 52.1; Comments: Proxy votes for REP. SHEA were recorded, but not submitted to the secretary following the meeting.}*

**Motion:** REP. KOTTEL MOVED HB 444 DO PASS AS AMENDED.

**Motion:** REP. MOLNAR MOVED TO AMEND BY INSERTING ON PAGES 3 AND 5 "DEVIANT SEXUAL CONDUCT, AS DESCRIBED IN 45-5-505, MCA."

**Discussion:** REP. MOLNAR explained his reasoning for the amendment that though gays and lesbians are covered under that statute, so are bestiality and other things. He said the bill was worded to require proof that there would be no endangerment to a child. He doubted that a judge would say that having a lover of the same gender is an endangerment to a child. However, there were other things in that same statute which could be an endangerment to a child. He felt it should be left to the discretion of the court to apply it as they would other statutes.

REP. KOTTEL suggested that since his statement indicated that he was not attempting to exclude parentage or custody by homosexual biological parents, the language under 45-2-101 (20), MCA, which defines deviant sexual relations be included in the wording of the amendment and to exclude the broad definition of deviant sexual behavior while including specifics like bestiality.

REP. MOLNAR suggested that be made as a substitute motion, but was uncomfortable with it because it dealt with the time period while a person was being charged with the felony and perhaps on

trial, but not actually convicted of the felony. They should allow the courts to get into the issue of seriously endangered....just the same as they do in all of the other felony crimes.

REP. KOTTEL said that last argument made sense to her because none of those behaviors would be excluded until the person had been convicted of deviant sexual behavior. She wanted to change the wording and the sponsor of the amendment had said why he did not want to change his amendment.

REP. ANDERSON asked if they could take this action within the title of the bill.

Mr. MacMaster answered that they could and why.

Vote: The motion carried 10 - 8 by roll call vote.


Motion/Vote: REP. BOHARSKI MOVED HB 444 DO PASS AS AMENDED. The motion carried 14 - 4 by roll call vote.

Motion: REP. BOHARSKI MOVED TO ADJOURN.

*{Comments: This set of minutes is complete on three 60-minute tapes.}*

ADJOURNMENT

**Adjournment:** The meeting was adjourned at 12:10 PM.



BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg

# HOUSE OF REPRESENTATIVES

## Judiciary

ROLL CALL

DATE 2/10/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		





## HOUSE STANDING COMMITTEE REPORT

.February 10, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that **House Bill 309** (first reading copy -- white) do pass as amended.

Signed: Bob Clark  
Bob Clark, Chair

### And, that such amendments read:

1. Page 2, lines 10 and 11.

Strike: "or health" on line 10 through "chapter 8" on line 11

Insert: "podiatrist, optometrist, chiropractor, physical therapist, or nurse licensed under Title 37 or a health care facility licensed under Title 50, chapter 5"

2. Page 2, line 12.

Strike: "has the meaning defined in 27-6-103"

Insert: "means a claim based on a negligent act or omission by a health care provider in the rendering of professional services that is the proximate cause of a personal injury or wrongful death"

-END-

2/10

mm

Committee Vote:

Yes 13, No 6

351520SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

February 10, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 323 (first reading copy -- white) do pass as amended.

Signed: Bob Clark  
Bob Clark, Chair

And, that such amendments read:

1. Page 1, lines 11 through 17.

Strike: "(1)" on line 11 through "(2)" on line 17

2. Page 1, line 17.

Strike: "letter issued under subsection (1), the"

3. Page 1, line 18.

Following: "permit"

Strike: ", "

4. Page 1, line 24.

Insert: "NEW SECTION. Section 3. Coordination instruction. If House Bill No. 232 is passed and approved with a provision exempting a concealed weapon permittee from the federal handgun purchase background check and 5-day waiting period, then [this act] is void."

-END-

*Mr*  
2/10

Committee Vote:

Yes 15, No 3.

351522SC.Hbk



## HOUSE STANDING COMMITTEE REPORT

February 10, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 444** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark  
Bob Clark, Chair

**And, that such amendments read:**

1. Title, line 4.

Strike: "REBUTTABLE PRESUMPTIONS"

Insert: "AN ADDITIONAL FACTOR THAT A COURT MUST CONSIDER"

2. Page 1, line 21.

Following: line 20

Insert: "(f) a knowing failure of a parent to pay birth-related costs or child support that the parent is able to pay;"

Renumber: subsequent subsections

3. Page 1, line 26, through line 6 of page 2.

Strike: subsections (3) and (4) in their entirety

4. Page 3, line 13.

Following: line 12

Insert: "(v) deviate sexual conduct, as described in 45-5-505;"

Renumber: subsequent subsection

5. Page 5, line 3.

Following: line 2

Insert: "(v) deviate sexual conduct, as described in 45-5-505;"

Renumber: subsequent subsection

2/10

Committee Vote:

Yes 14, No 4.

351524SC.Hbk

# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

### Judiciary Committee

DATE 2/10/95 BILL NO. HB 309 NUMBER Soft Amendments

MOTION: As Attached as Exhibit 1

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee		✓
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith		✓
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

### Judiciary Committee

DATE 2/10/95 BILL NO H.B. 309 NUMBER Wyatt Amendments

MOTION: As attached as Exhibit 2

NAME	AYE	NO
Rep. Bob Clark, Chairman		✓
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski	<del>✓</del>	✓
Rep. Bill Carey	✓	
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel	✓	
Rep. Linda McCulloch	✓	
Rep. Daniel McGee		✓
Rep. Brad Molnar		✓
Rep. Debbie Shea	✓	
Rep. Liz Smith		✓
Rep. Loren Soft		✓
Rep. Bill Tash		✓
Rep. Cliff Trexler		✓

# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

### Judiciary Committee

DATE 2/10/95 BILL NO. HB 309 NUMBER           

MOTION: Do Pass As Amended

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

### Judiciary Committee

DATE 2/10/95 BILL NO. HB444 NUMBER Boharski Amendment

MOTION: Strike Section 1

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner		✓
Rep. Ellen Bergman		<del>✓</del>
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft		✓
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

### Judiciary Committee

DATE 2/10/95 BILL NO. HB444 NUMBER \_\_\_\_\_

MOTION: Do Pass As Amended

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	
Rep. Ellen Bergman		
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea	✓	
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	



# HOUSE OF REPRESENTATIVES

## ROLL CALL VOTE

### Judiciary Committee

DATE 2/16/95 BILL NO. HB 944 NUMBER Molnar Amendment

MOTION: \_\_\_\_\_

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman		
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler		✓

# HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 2-10-95

I request to be excused from the Judiciary  
Committee meeting this date because of other commitments. I desire  
to leave my proxy vote with Ch. Bob Clark.

Indicate Bill Number and your vote Aye or No. If there are  
amendments, list them by name and number under the bill and  
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
323 (w/Clark on funds + Bill)		

SENATE BILL/AMENDMENT	AYE	NO

Rep. Shel Anderson  
(Signature)

February 7, 1995

Proposed Amendments to House Bill 309

1. Page 2, line 10.

Following: "dentist,"

Strike: "remainder of line 10 and line 11 in their entirety

Insert: "podiatrist, optometrist, chiropractor, physical therapist, or nurse licensed under Title 37, or a health care facility licensed under Title 50, chapter 5."

2. Page 2, Line 12.

Following: "'Malpractice claim'"

Strike: the remainder of line 12 in its entirety

Insert: "means a claim based on a negligent act or omission by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death."

Pat Melby  
Montana Optometric Association  
Montana Podiatric Medical Association

Amendments to House Bill No. 309  
First Reading Copy

Requested by Rep. Wyatt  
For the Committee on the Judiciary

Prepared by John MacMaster  
February 9, 1995

1. Title, line 8.  
Strike: "SECTION"  
Insert: "SECTIONS"  
Following: "25-9-403"  
Insert: "AND 33-16-202"

2. Page 4, line 11.

Following: line 10

Insert: "Section 4. Section 33-16-202, MCA, is amended to read:

**"33-16-202. Recording and reporting of loss and expense experience.** (1) The commissioner shall promulgate and may modify reasonable rules and statistical plans, reasonably adapted to each of the rating systems used, and which shall thereafter be used by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid him in determining whether rates comply with the applicable standards of this chapter. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience.

(2) In promulgating such rules and plans, the commissioner shall give due consideration to the rating systems in use in this state and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system used by it.

(3) The commissioner may designate one or more rating organizations or other agencies to assist him in gathering such experience and making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the commissioner, to insurers and rating organizations.

(4) The commissioner may by rule require each insurer writing medical malpractice insurance in this state to annually report its Montana loss experience and exposure to one or more rating organizations designated by the commissioner."

Renumber: subsequent sections

**MEDICAL MALPRACTICE AND TORT REFORM:  
ISSUES OF INSURANCE COSTS, COVERAGE,  
CAPS, AND COMPENSATION**

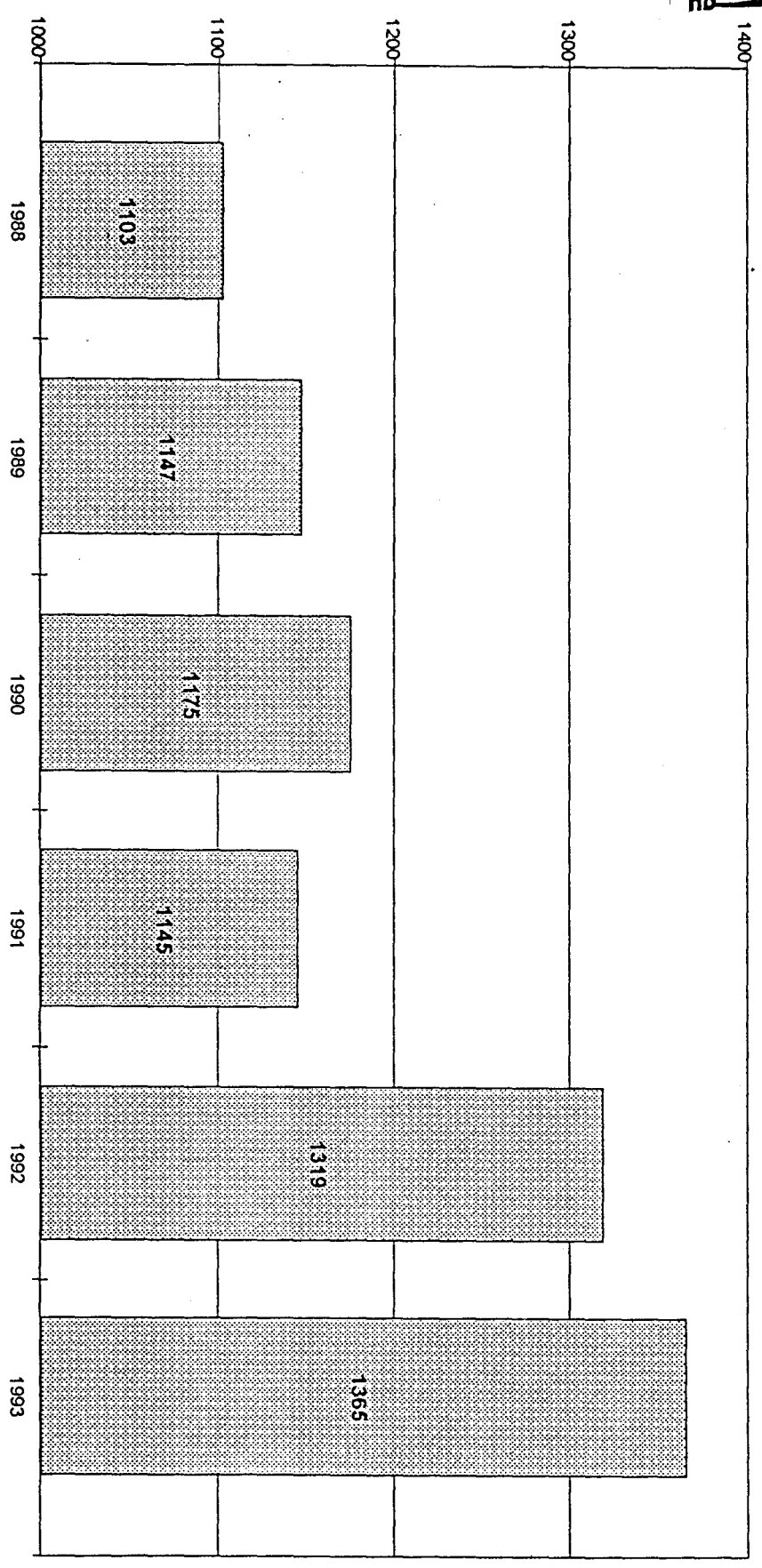
A Report to the 54th Legislature  
from the  
JOINT INTERIM SUBCOMMITTEE ON INSURANCE ISSUES

Prepared by  
Connie F. Erickson, Staff Researcher  
and  
Susan Byorth Fox, Staff Researcher

November 1994

Published by  
Montana Legislative Council  
Room 138, State Capitol  
Helena, MT 59620-1706  
(406) 444-3064

# ACTIVE MONTANA PHYSICIANS, 1988-1993



Based on assessments reported by the Montana Medical-Legal Panel

JAMISON LAW FIRM  
ATTORNEYS AT LAW

POWER BLOCK BUILDING, SUITE 4G  
HELENA, MONTANA 59601

MONA JAMISON  
STAN BRADSHAW

EXHIBIT 5  
DATE 2/10/95  
HB 309

PHONE: (406) 442-5581  
FAX: (406) 449-3668

TO: House Judiciary Committee  
FROM: Mona Jamison, Lobbyist for "The Doctors' Company"  
RE: Testimony on HB 309 -- \$250,000 Cap on Noneconomic Damages  
DATE: February 2, 1995

Section 1 of HB 309, however, limits awards for *noneconomic* loss. Noneconomic loss is defined in HB 309 as "pain, suffering, inconvenience, loss of consortium, physical impairment, disfigurement, and other non-pecuniary damages." No provision on HB 309 limits payments for *economic damages* such as lost wages and medical costs. These real damages are not affected by this bill.

Skilled attorneys can use the sympathy factor to manipulate juries into awarding high amounts for noneconomic damages. Placing a cap on such damages significantly reduces the cost of all claims, regardless of noneconomic factors. The cap allows malpractice insurance carriers to keep premiums down, which in turn allows physicians to continue delivering services. This is a benefit in rural areas and also for physicians practicing in high risk specialties, such as obstetrics.

The vast majority (over 95%) of medical malpractice cases are settled out of court and the damages typically are not categorized as economic or noneconomic. The lack of a cap on noneconomic damages leads to increases in the amount required to settle cases without a trial even though the actual settlement may not involve damages specifically categorized as an award for "pain and suffering."

A cap on noneconomic damages is singularly the most important element of stabilizing and reducing premiums for medical malpractice insurance for physicians.

-END-

JAMISON LAW FIRM

ATTORNEYS AT LAW

POWER BLOCK BUILDING, SUITE 4G  
HELENA, MONTANA 59601

MONA JAMISON  
STAN BRADSHAW

PHONE: (406) 442-5581  
FAX: (406) 449-3668

**TO:** House Judiciary Committee

**FROM:** Mona Jamison, Lobbyist for "The Doctors' Company"

**RE:** Testimony on HB 309 -- Periodic Payments of Future Damages  
in Excess of \$50,000

**DATE:** February 2, 1995

This provision allows settlements and judgments for "future" damages to be made in payments at regular intervals. Future damages are defined as payment for future medical treatment, care or custody, loss of earnings, or future noneconomic damages such as pain and suffering.

1. The injured patient receives more of an award under the periodic payment scheme proposed in Section 2 of HB 309. The attorney, however, receives less. Under a lump sum scheme, the plaintiff's attorney's fee is much higher because the fee is a percentage of a large amount instead of a percentage of a large amount reduced to its present value. This is also one aspect of the inherent conflict of interest presented by the contingency fee arrangement.

2. Periodic payments contribute to insurance premium stability. When the periodic payment of future damages is mandatory, as proposed in HB 309, it is easier for the insurer to calculate appropriate reserves. When an annuity can be bought within premium limits, reserves are calculable. Large lump sum losses that exceed premium limits wreak havoc with reserves and contribute to premium instability. In less populated states, substantial premium increases can result from even one large verdict or settlement that must be paid in a lump sum.

3. The tax consequences of periodic payments are much more favorable to the plaintiff. A lump sum payment itself is not taxable. However, when that sum is invested, the interested is taxable. Likewise, when payments are periodicized, each payment (which includes imputed interest) is not taxable. Where a portion of the payment is invested, the taxable income is taxed at a lower rate than income from a larger, lump sum.

4. When periodic payments are mandatory, settlement negotiations are more successful. When the plaintiff's attorney knows that future damages will be periodicized, he will be less likely to take the case to trial because it will not increase his chances receiving a higher fee--his fee will be lower than under a lump sum award. Overall, however, the patient receives the same amount of money (including imputed interest).



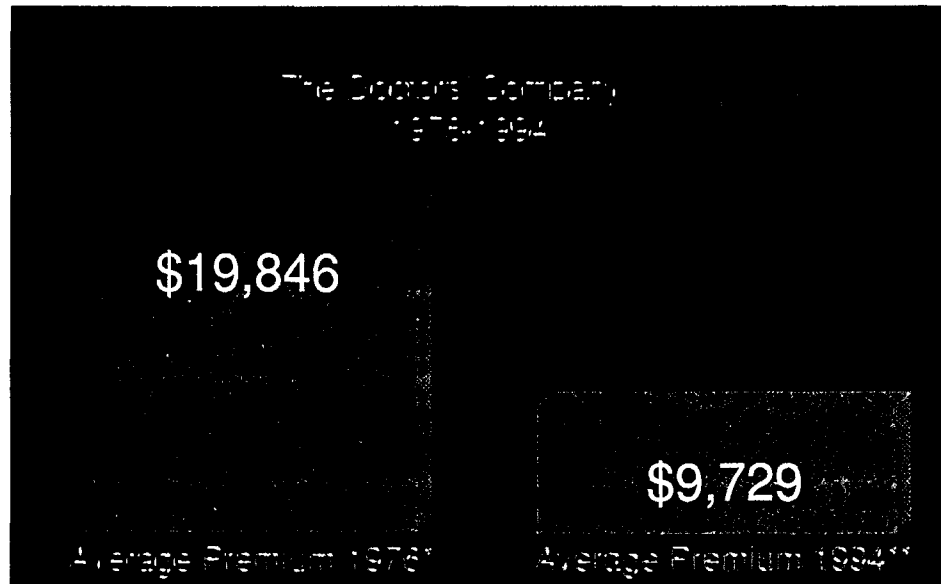
HB 309 Testimony  
February 2, 1995  
Page 2

5. Experience shows that when periodic payment provisions are discretionary, such as in existing law, judges, more often than not, will not exercise their discretion and order such payments. Thus, even though the mandatory periodic payment section is second in importance to the cap on non-economic damages on premium stability, only a mandatory provision will be effective.

6. Studies have shown that large lump sum payments are often depleted by the patient and/or the patient's conservator, often a family member. Since large lump sum payments are intended for future medical costs and lost wages, bad investments or extravagant expenditures use up the funds, which then become unavailable for their intended purpose.

-END-

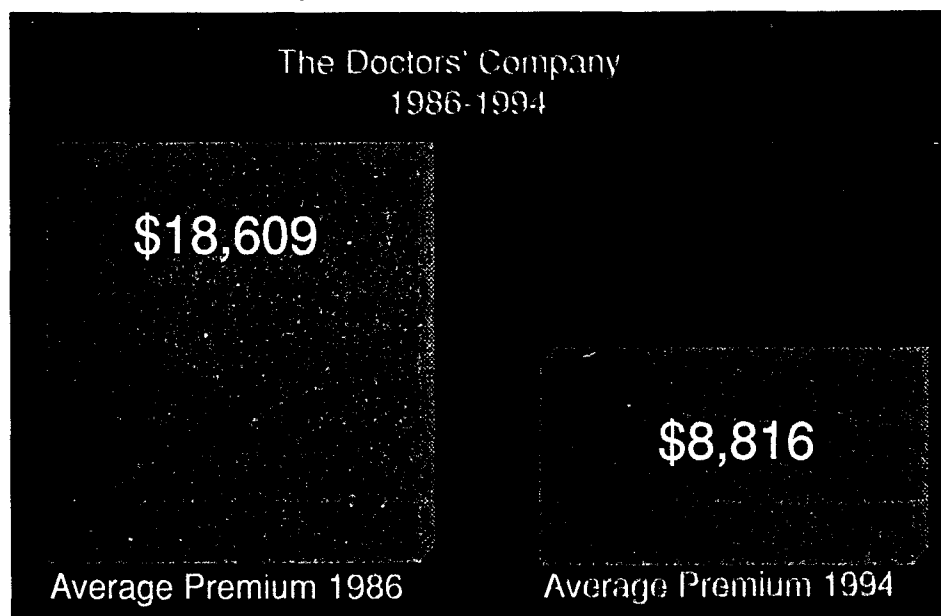
## MICRA Reduces California Medical Liability Premium Rates by 51%



\*\$7,614 average premium adjusted to 1994 dollars on the December Urban CPI Index for a \$1 Million / \$3 Million Claims-Made Policy Premium

\*\*After dividend deduction (where applicable) for a \$1 Million / \$3 Million Claims-Made Policy Premium

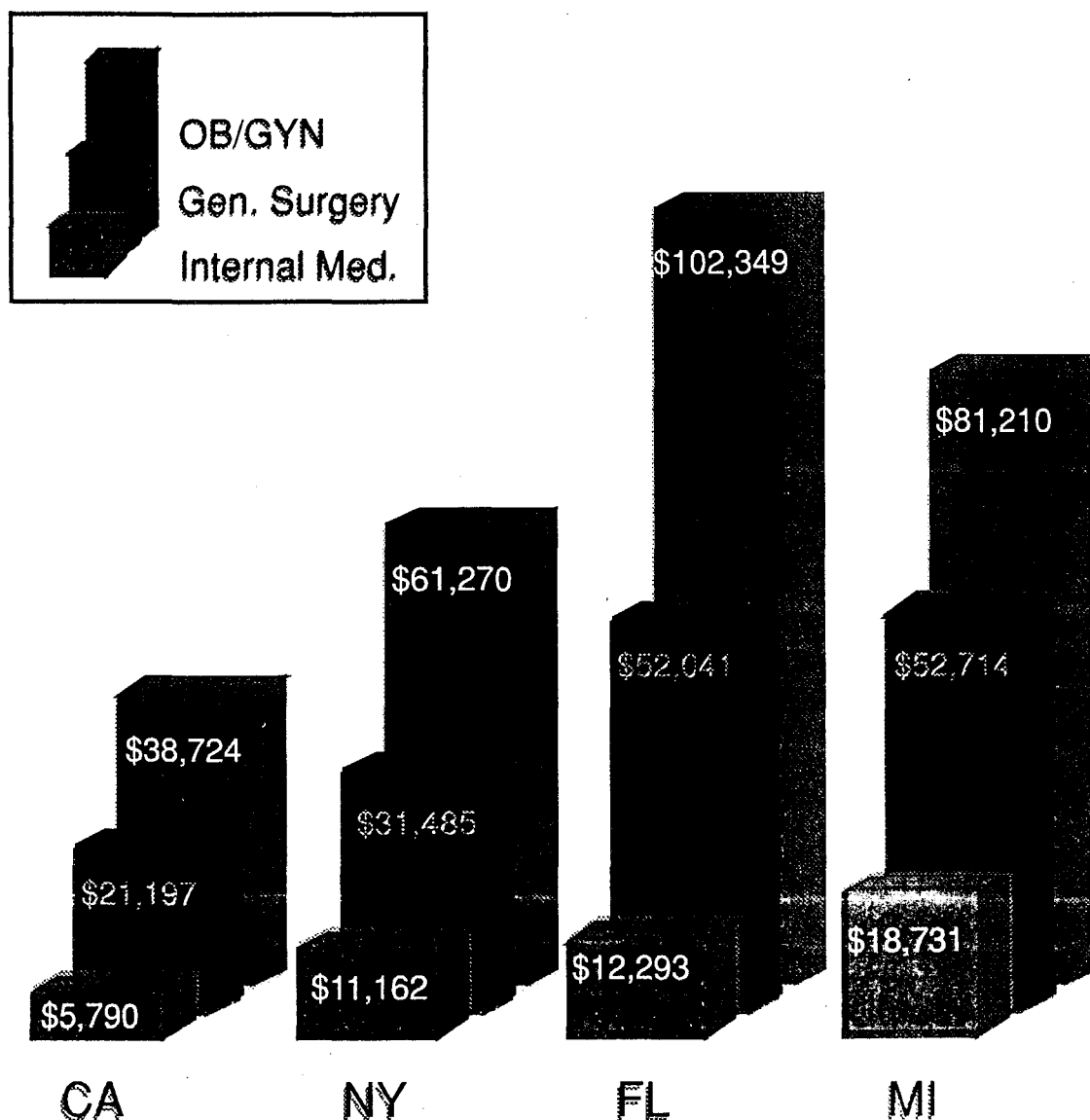
## Tort Reform Reduces Colorado Medical Liability Premium Rates by 53%\*



\*The Doctors' Company's average of all specialties, including dividends for a \$1 Million / \$3 Million Claims-Made Policy Premium

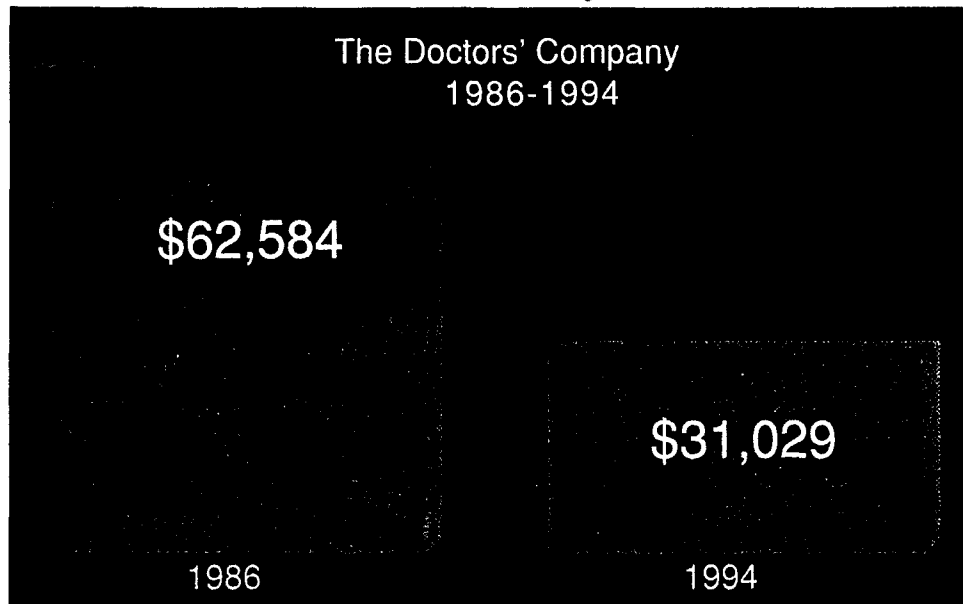
## California Premiums Are Now Lower

Thanks to MICRA, liability insurance rates for California physicians are now one-third to one-half those paid by physicians in states that have failed to enact MICRA-like reforms, and that benefits all Californians.



Based on average published rates excluding discounts or surcharges for \$1 million/  
\$3 million in liability coverage.

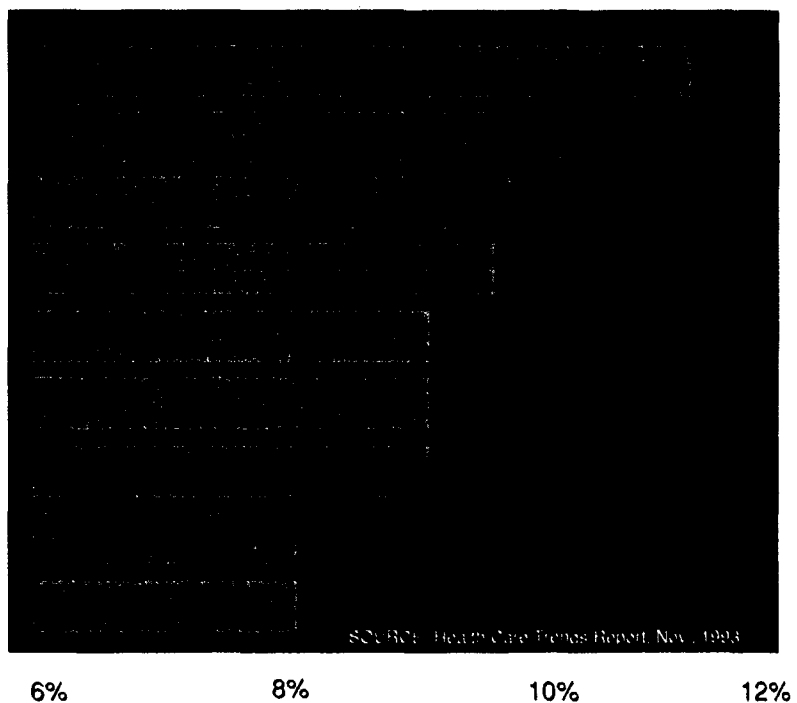
## Tort Reform Reduces Colorado OB/GYN Rates by 51%\*



\*The Doctors' Company's premiums, including dividends for a \$1 Million / \$3 Million Claims-Made Policy

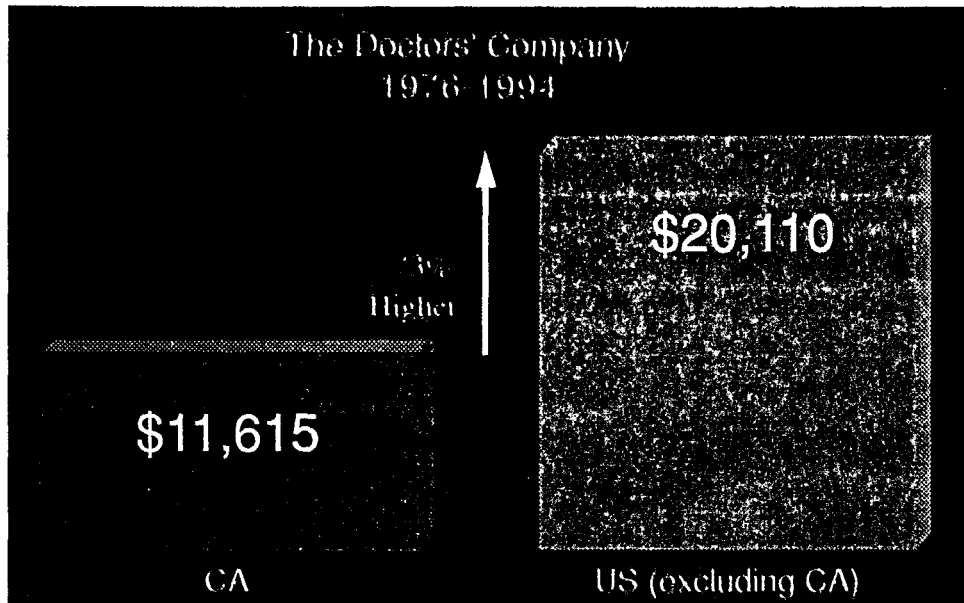
## Average Annual Growth In Per Capita Spending 1980-1991\*

Southeast  
New England  
Midwest  
Rocky Mountain  
United States  
Southwest  
Plains  
Great Lakes  
Far West



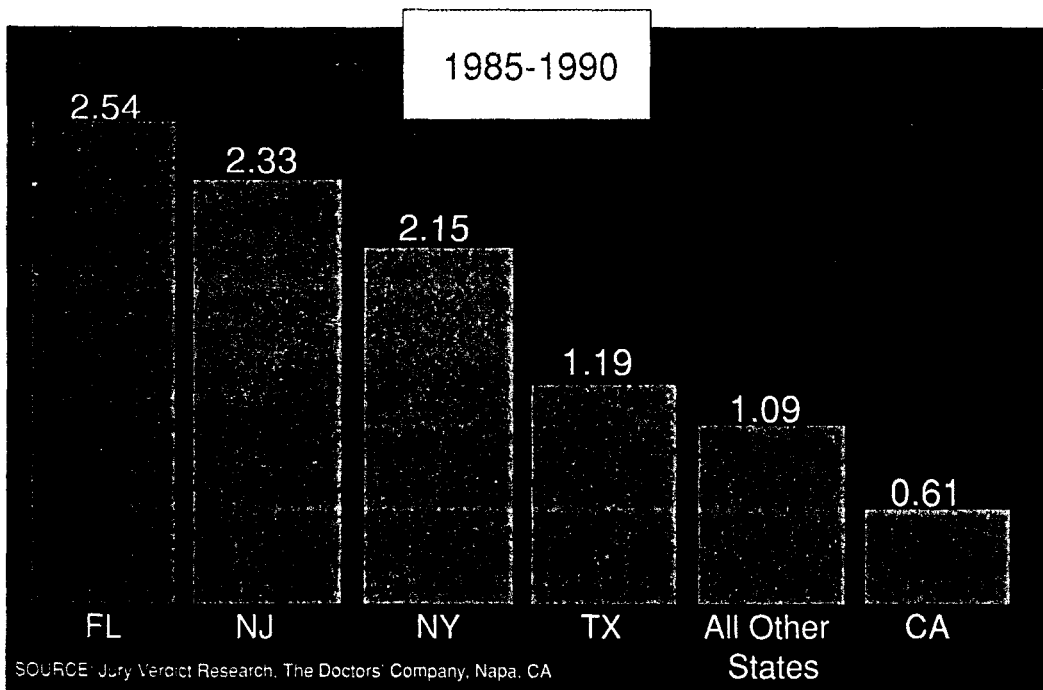
\*Includes per capita spending for hospital care, physician services, and prescription drugs

## Average of All Settlements & Jury Verdicts



## MICRA Reduces Verdict Cost & Frequency

\$1 Million + Verdicts Per 1,000 Doctors



**DIANNE M. NAGY, RNC, NP**OB / GYN Nurse Practitioner  
in association with Daniel M. Molloy, M.D.

EXHIBIT

6

DATE

2/16/95

HB

309

KM 312-1A

(H) JUDICIARY

SEC DOANNE

I support House Bill 309 which limits non-economic damage to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

Dianne M. Nagy, RNC, NP  
Dianne M. Nagy, RNC, NP

Dianne M. Nagy, RNC, NP  
Dianne M. Nagy, RNC, NP



MEMBER OF MONTANA ASSOCIATED PHYSICIANS, INC.

1239 N. Broadway • Billings, MT 59101 • (406) 245-4100

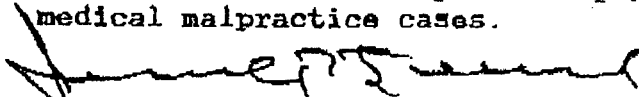
*Jerome R. Stewart, D.O.*

POLY DRIVE FAMILY PRACTICE

120 POLY DRIVE  
BILLINGS, MONTANA 59101  
TELEPHONE (406) 256-1135

EXHIBIT 7  
DATE 2/10/95  
HB 309

I support House Bill 309 which limits non-economic damage to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

  
Jerome R. Stewart D.O.



PROUD TO BE  
A MEMBER OF  
MONTANA  
ASSOCIATED  
PHYSICIANS, INC.

FAMILY MEDICINE • OSTEOPATHIC MANIPULATION



*Donald A. Grewell, D.O.*

120 POLY DRIVE  
BILLINGS, MONTANA 59101  
TELEPHONE (406) 258-1135

POLY DRIVE FAMILY PRACTICE

EXHIBIT 8  
DATE 2/10/95  
HB 309

I support House Bill 308 which limits non-economic damage to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

*D. Grewell*  
Donald A. Grewell D.O.



PROUD TO BE  
A MEMBER OF  
MONTANA  
ASSOCIATED  
PHYSICIANS, INC.

Diplomat, American Board of Family Practice  
Family Medicine • Osteopathic Manipulation





Diplomate American Board of  
Physical Medicine & Rehabilitation

Diplomate American Board of  
Electrodiagnostic Medicine

**Donald H. See, M.D.**  
Physical Medicine & Rehabilitation  
Electromyography  
(406) 256-6227

Yellowstone Medical Building  
Suite 201  
1145 North 29th Street  
Billings, MT 59101

EXHIBIT 9  
DATE 2/10/95  
HB 309

February 9, 1995

ATTENTION: MONTANA STATE LEGISLATURE

IN REGARD TO: House Bill 309

I SUPPORT HOUSE BILL 309 WHICH LIMITS NON-ECONOMIC DAMAGE  
TO \$250,000 AND MANDATES PERIODIC PAYMENTS OF FUTURE DAMAGES  
IN MEDICAL MALPRACTICE CASES.

SINCERELY,



DONALD H. SEE, M.D.

# Rocky Mountain Clinic

Rocky Mountain Service Corporation

EXHIBIT 10

DATE 2/10/95

HB 309

## FAMILY PRACTICE

Bruce E. Knutsen, M.D.  
Patrick J. McGree, M.D.  
George Micaire-Jones, M.D.  
Obstetrics  
Dennis Salisbury, M.D.  
Obstetrics  
Jarrille Krueger, P.A.-C.

February 08, 1995

## INTERNAL MEDICINE

Ryland P. Byrd Jr., M.D.  
Pulmonary Disease  
John R. Jacobson, M.D.  
Oncology  
Daniel H. Mathers, M.D.  
Cardiology  
J. Michael Sada, M.D.  
Pulmonary Disease  
Jake Taverna, M.D.  
Asthma and  
Related Diseases

Representative Bob Clark  
Chairman, House Judiciary Committee  
Montana State House of Representatives  
Helena, MT 59601

FAX NUMBER: 900-225-1600

Dear Mr. Clark:

We wish to express vigorous support for House Bill 309, which would revise medical malpractice recovery laws.

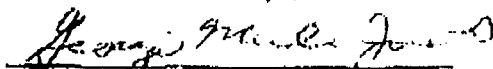
We believe this bill will result in an overall decrease in health care costs to the people of Montana.

Sincerely,

  
J. Michael Sada, M.D.

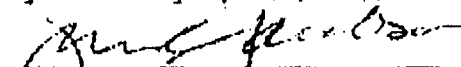
  
Bruce E. Knutsen, M.D.


  
Patrick J. McGree, M.D.

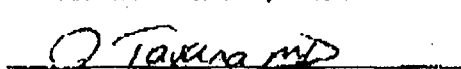
  
George Micaire-Jones, M.D.

  
Dennis Salisbury, M.D.

  
Ryland P. Byrd, Jr., M.D.

  
John R. Jacobson, M.D.

  
Daniel H. Mathers, M.D.

  
Jake Taverna, M.D.

JMS:mkc  
D/T: 02/08/95

EXHIBIT 11

DATE 2/10/95

INTERNAL MEDICINE ASSOCIATES, P.C. HB 309

1230 N. 30th Street  
Billings, Montana 59101

J. Patrick Byrth, M.D.  
Neal Hammond, M.D.  
Benjamin T. Marchello, M.D.  
Neal Sorensen, M.D.  
Michael Metzger, M.D.  
Byron J. Busch, M.D.  
David F. Johnson, M.D.  
Gerardo Midence, M.D.

Internal Medicine  
Oncology-Hematology  
Endocrinology  
Phone: (406) 238-6900  
1-800-648-6274  
FAX (406) 238-6935

February 9, 1995

Dear Montana State Legislature:

I support House Bill 309, which limits non-economic damages to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

Sincerely,

  
DAVID JOHNSON, M.D.

DJ/kls

D: 2/9/95  
T: 2/9/95



EXHIBIT 12  
DATE 2/10/95  
HB 309

INTERNAL MEDICINE ASSOCIATES, P.C.

1230 N. 30th Street  
Billings, Montana 59101

J. Patrick Byorth, M.D.  
Neal Hammond, M.D.  
Benjamin T. Marchello, M.D.  
Neal Sorensen, M.D.  
Michael Metzger, M.D.  
Byron J. Busch, M.D.  
David F. Johnson, M.D.  
Gerardo Midence, M.D.

Internal Medicine  
Oncology-Hematology  
Endocrinology  
Phone: (406) 238-6900  
1-800-648-6271  
FAX (406) 238-6931

February 9, 1995

Dear Montana State Legislature:

I support House Bill 309, which limits non-economic damages to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

Sincerely,

  
NEAL B. SORESENSEN, M.D.

NBS/klb

D: 2/9/95  
T: 2/9/95



EXHIBIT 13

DATE 2/10/95

HB 309

INTERNAL MEDICINE ASSOCIATES, P.C.

1230 N. 30th Street  
Billings, Montana 59101

J. Patrick Byorth, M.D.  
Neel Hammond, M.D.  
Benjamin T. Marchello, M.D.  
Neel Sorenson, M.D.  
Michael Metzger, M.D.  
Byron J. Busch, M.D.  
David F. Johnson, M.D.  
Gerardo Midence, M.D.

Internal Medicine  
Oncology-Hematology  
Endocrinology  
Phone: (406) 238-6900  
1-800-648-6274  
FAX (406) 238-6935

February 9, 1995

Dear Montana State Legislature:

I support House Bill 309, which limits non-economic damages to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

Sincerely,

  
NEEL HAMMOND, M.D.

NH/kls

D: 2/9/95

T: 2/9/95



EXHIBIT 14  
DATE 2/10/95  
HB 309

INTERNAL MEDICINE ASSOCIATES, P.C.

1230 N. 30th Street  
Billings, Montana 59101

Internal Medicine  
Oncology-Hematology  
Endocrinology  
Phone: (406) 238-6900  
1-800-648-6274  
FAX (406) 238-6935

J. Patrick Byorth, M.D.  
Neel Hammond, M.D.  
Benjamin T. Marchello, M.D.  
Neal Sorensen, M.D.  
Michael Metzger, M.D.  
Byron J. Busch, M.D.  
David F. Johnson, M.D.  
Gerardo Midence, M.D.

February 9, 1995

Dear Montana State Legislature:

I support House Bill 309, which limits non-economic damages to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

Sincerely,

  
MICHAEL METZGER, M.D.

MM/kls

D: 2/9/95  
T: 2/9/95



**YELLOWSTONE NEUROSURGICAL ASSOCIATES, P.C.**

---

EXHIBIT 15DATE 2/10/95HB 309

I support House Bill 309 which limits non-economic damage to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

Thank you for your consideration.

Lisa Moring

FRED G. MCMURRY, M.D.

1145 North 29th Street Suite 501 Billings, Montana 59101

FAX 406-259-5224 406-238-6650 1-800-648-6274

Members Montana Associated Physicians, Inc.

JOHN I. MOSELEY, M.D.





## YELLOWSTONE NEUROSURGICAL ASSOCIATES, P.C.

EXHIBIT 16  
DATE 2/10/95  
HB 309

I support House Bill 309 which limits non-economic damage to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

Thank you for your consideration.

  
Gina Balazs

FRED G. MCMURRY, M.D.

1145 North 29th Street Suite 501 Billings, Montana 59101

FAX 406-259-5224 406-238-6650 1-800-648-6274

Members Montana Associated Physicians, Inc.

JOHN I. MOSELEY, M.D.







## YELLOWSTONE NEUROSURGICAL ASSOCIATES, P.C.

EXHIBIT 17DATE 2/10/95HB 309

I support House Bill 309 which limits non-economic damage to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

Thank you for your consideration.

John I Moseley, M.D.

FRED G. MCMURRY, M.D.

1145 North 29th Street Suite 501 Billings, Montana 59101

FAX 406-259-5224 406-238-6650 1-800-648-6274

Members Montana Associated Physicians, Inc.

JOHN I. MOSELEY, M.D.





## YELLOWSTONE NEUROSURGICAL ASSOCIATES, P.C.

---

EXHIBIT 18  
DATE 2/10/95  
HB 309

I support House Bill 309 which limits non-economic damage to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

Thank you for your consideration.

*Fred G. McMurry M.D.*  
Fred G. McMurry, M.D.

FRED G. MCMURRY, M.D.

1145 North 29th Street Suite 501 Billings, Montana 59101

FAX 406-259-5224 406-238-6650 1-800-648-6274

Members Montana Associated Physicians, Inc.

JOHN I. MOSELEY, M.D.



**YELLOWSTONE NEUROSURGICAL ASSOCIATES, P.C.**

EXHIBIT 19  
DATE 8/10/95  
HB 309

I support House Bill 309 which limits non-economic damage to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

Thank you for your consideration.

Judy Schopfer, RN

FRED G. MCMURRY, M.D.

1145 North 29th Street Suite 501 Billings, Montana 59101

FAX 406-259-5224 406-238-6650 1-800-648-6274

Members Montana Associated Physicians, Inc.

JOHN I. MOSELEY, M.D.



EXHIBIT 20  
DATE 2/10/95  
HB 309

JANET L. DIETRICH, M.D.  
Gynecologist

North Broadway Medical Center  
1239 North Broadway, Suite 5  
Billings, Montana 59101  
406 245-4100

2-9-95

I support House Bill 309 which limits non-economic damages to \$250,000 and mandates periodic payments of future damages in medical malpractice cases.

Janet L. Dietrich M.D.  
Janet L. Dietrich, MD

Janet L. Dietrich M.D.  
Janet L. Dietrich, MD

**SURGICAL ASSOCIATES, P.C.**  
**GENERAL, VASCULAR AND THORACIC SURGERY**  
MEDICAL ARTS CENTER • 1230 NORTH 30TH STREET  
BILLINGS, MONTANA 59101-0178  
(406) 252-8484

EXHIBIT 21  
DATE 2/10/95  
HB 309



MEMBER OF  
MONTANA  
ASSOCIATED  
PHYSICIANS, INC.

FAX: (406) 657-8837

ELMER E. KOBOLD, M.D., F.A.C.S.  
JOHN H. COOK, M.D., F.A.C.S.  
JOHN D. MIDDLETON, M.D., F.A.C.S.  
DENNIS W. MAIER, M.D.

February 8, 1995

*RM 312-1A  
SEC JOANNF*

To the House Judiciary Committee:

Please support House Bill 309. A cap on non-economic damages and mandating periodic payments in medical liability cases is long overdue in Montana. These tort reform measures will lower insurance costs and will add predictability to malpractice premiums.

These tort reform measures add fairness and reasonableness to medical liability cases when an unintended injury by an honest caring physician occurs. They do not lower actual damages to an injured patient.

Please support HB 309.

Sincerely,

E. E. Kobold, M. D.

EEK/SL

Billings West  
Internal Medicine

EXHIBIT 22  
DATE 2/10/95  
HB 309

February 8, 1995

~~House~~ Judiciary Committee  
Capitol Building  
Helena, MT 59603

Dear Sirs:

I'm informed that you are considering a Tort reform bill.

Please support H.B. 309 which will decrease liability insurance costs by mandating periodic payments and placing a cap on non-economic damage.

Sincerely,



Joseph C. Maheras, M.D.

EXHIBIT 23  
DATE 2/10/95  
HB 309

The  
American  
College of  
Obstetricians and  
Gynecologists

Office of the Chairman  
Montana Section  
Van Kirke Nelson, M.D.  
210 Sunnyview Lane  
Kalispell, MT 59901-3190  
(406) 752-5260

February 8, 1995

DISTRICT VIII

Representative Bill Boharski  
House Judiciary Committee  
Capitol Station  
Helena, MT

Dear Representative Boharski:

I write this letter on behalf of the physicians in Montana who practice obstetrics and gynecology.

We all very much appreciate the introduction of House Bill #309 and those that have supported it to date.

Many of us consider this as the "capstone" of any successful legislation as it applies to tort reform and stabilization of premiums.

I know that each of you on the Judiciary Committee have heard testimony and are familiar with the arguments, both pro and con.

Very clearly, we still have areas in Montana, most of them rural, that would have physicians practicing obstetrics if their obstetrical premiums were affordable. Retention of physicians is still a problem because it is difficult to make a living in a rural committee and affordable premiums would make a difference.

This year we have already been advised by our carrier that there will be a 6-8% increase. When you have to pay in excess of \$20,000 for your liability premium--it does make a difference.

Passage of House Bill #309 will stabilize the cost of liability insurance in Montana and many of us do believe that with stabilized premiums and insurance at a reasonable cost that we can attract physicians to rural areas and retain them.

I believe that every responsible physician believes in the importance of liability insurance because we do make mistakes and the patient should be compensated but not enriched as the present climate allows.

Further, most Montana physicians appreciate the high cost of health insurance and are trying to hold the line as far as increased costs for physician services rendered to patients. Certainly passage of House Bill #309 will assist in that endeavor.

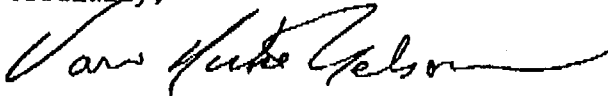
Page 2

February 8, 1995

Thank you very much for your service to Montana in this busy legislative season. Many of us do appreciate it.

Thank you.

Cordially,

A handwritten signature in cursive script, reading "Van Kirke Nelson".

Van Kirke Nelson, M.D.

VKN/ce



**BILLINGS GASTROINTESTINAL ASSOCIATES**THOMAS W. KORB, M.D.  
NINA TOMASZEWSKI, M.D.  
STEPHEN E. BAUM, M.D.

To: House Judiciary Committee

8 Feb 95

EXHIBIT 24DATE 2/10/95HB 309

Gentlemen:

Please support House bill 309 imposing a cap of \$250,000 on non-economic damages and mandating periodic payment of future damages. A similar bill appears to be working in California in decreasing malpractice insurance rates and ensuring predictability of premiums.

I believe these measures will add fairness and a more reasonable approach in medical liability situations in which unintended injury occurs to a patient and will not lower payment of actual damages to a patient.

Sincerely

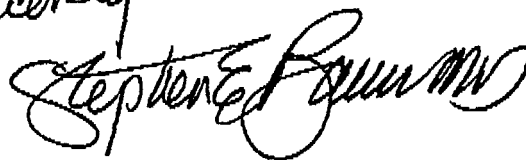


EXHIBIT 25  
DATE 2/10/95  
HB 323

Amendments to House Bill No. 323  
First Reading Copy

Requested by Rep. McGee  
For the Committee on the Judiciary

Prepared by John MacMaster  
February 10, 1995

1. Page 1, lines 11 through 17.

Strike: "(1)" on line 11 through "(2)" on line 17

2. Page 1, line 17.

Strike: "letter issued under subsection (1), the"

3. Page 1, line 18.

Following: "permit"

Strike: ", "

4. Page 1, line 24.

Insert: "NEW SECTION. **Section 3. Coordination instruction.** If House Bill No. 232 is passed and approved with a provision exempting a concealed weapon permittee from the federal handgun purchase background check and 5-day waiting period, then [this act] is void."

Amendments to HB 382

1. Title to bill, include "state, county," before "city or town" and delete lines 6 through 9, beginning with "; AND" through "THE SIDEWALK":

A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE LIABILITY OF THE STATE, A COUNTY, CITY OR TOWN FOR A DEFECT IN A SIDEWALK; REQUIRING ACTUAL NOTICE TO OR KNOWLEDGE BY THE STATE, A COUNTY, CITY OR TOWN OF A NEEDED REPAIR OF A SIDEWALK FOR THE STATE, COUNTY, CITY OR TOWN TO BE LIABLE FOR FAILURE TO REPAIR; ~~AND REQUIRING THE STATE TO MAINTAIN A SIDEWALK IN A CITY OR TOWN THAT IS ADJACENT TO A STATE HIGHWAY UNLESS THE STATE CONTRACTS WITH THE CITY OR TOWN FOR MAINTENANCE OF THE SIDEWALK.~~"

2. Section 1(1). Delete lines 14 - 15 in their entirety and insert in lieu thereof:

(1) A city or town is not liable for negligent installation of or maintenance for any defect in the surface of the sidewalk that is 1.5 inches or less out of line with the plane of the sidewalk. A grade deviation of 1.5 inches or less, whether between two separate sidewalks, foot pavements, curbs, gutters, or any combination thereof or two concrete slabs in the same sidewalk, foot pavement, curb, or gutter does not constitute a defective or dangerous condition; and the State, county, city or town council shall not be deemed to be negligent in the construction, maintenance or repair of such sidewalks, foot pavements, curbs, gutters, or any combination thereof where there exists a grade deviation of 1.5 inches or less.

3. Section 1 (2). Lines 16 and 17, add "State, county" before "city or town"; conform description of unsafe or dangerous condition to Section 1 (1); and, at line 18, after the words "own inspection" add: "and has failed to repair such defect or unsafe condition within a reasonable time after receiving actual notice or obtaining knowledge as a result of its own inspection.":

(2) The State, a county, A city or town is not liable for failure to repair a defective or unsafe dangerous condition of a sidewalk unless the State, county, city or town has received actual notice of the defective or unsafe dangerous condition or has knowledge of the defective or unsafe dangerous condition as a result of its own inspection and has failed to repair such defective or dangerous condition within a reasonable time after receiving actual notice or obtaining knowledge as a result of its own inspection.

4. Section 1 (3). Lines 19 and 20, Delete in their entirety.

# H/B-382

EXHIBIT 27  
 DATE 2/10/95  
 HB 382

## SIDEWALK LIABILITY CLAIM INFORMATION

	<u>TOTAL PROGRAM</u>	THRU :	<u>SIDEWALK ONLY</u>
	7/1/90	6/30/91	
# OF CLAIMS	667		24
# OF LITIGATED CLAIMS	80		8
TOTAL \$ INCURRED	\$3,384,155		\$ 191,747
AVG PER CLAIM COST	\$ 5,074		\$ 7,990
RATIO TOTAL CLAIMS TO LITIG CLAIMS	8.34/1		3/1
=====			
	7/1/91	6/30/92	
# OF CLAIMS	570		24
# OF LITIGATED CLAIMS	42		4
TOTAL \$ INCURRED	\$1,624,275		\$ 195,202
AVG PER CLAIM COST	\$ 2,850		\$ 8,133
RATIO TOTAL CLAIMS TO LITIG CLAIMS	13.57/1		6/1
=====			
	7/1/92	6/30/93	
# OF CLAIMS	601		22
# OF LITIGATED CLAIMS	37		3
TOTAL \$ INCURRED	\$1,158,150		\$ 53,953
AVG PER CLAIM COST	\$ 1,927		\$ 2,543
RATIO TOTAL CLAIMS TO LITIG CLAIMS	16.24/1		7.3/1
=====			
	7/1/93	6/30/94	
# OF CLAIMS	652		17
# OF LITIGATED CLAIMS	50		0 - 4 REP
TOTAL \$ INCURRED	\$2,810,894		\$ 75,594
AVG PER CLAIM COST	\$ 4,311		\$ 4,447
RATIO TOTAL CLAIM TO LITIG CLAIMS	13.04/1		17/0
=====			
	7/1/94	5/30/95	
# OF CLAIMS	471		12
# OF LITIGATED CLAIMS	14		1
TOTAL \$ INCURRED	\$1,148,147		\$ 102,443
AVG PER CLAIM COST	\$ 2,438		\$ 8,537
RATIO TOTAL CLAIM TO LITIG CLAIMS	33.64/1		12/1

HB-382-

TOTAL CLAIM INFORMATION

# OF CLAIMS	2,961	101
# OF LITIGATED CLAIMS	223	16
TOTAL \$ INCURRED	\$10,125,621	\$ 620,966
AVG PER CLAIM COST	\$ 3,420	\$ 6,148
RATION TOTAL CLAIM TO LITIG CLAIMS	13.3/1	6.3/1

GENERAL COMMENTS

- \* SIDEWALK CLAIMS ALWAYS INVOLVE BODILY INJURY
- \* SIDEWALK CLAIMS COST 180% MORE THAN AVERAGE CLAIM
- \* SIDEWALK CLAIMS ARE 2.1 TIMES MORE LIKELY TO INVOLVE LITIGATION
- \* SIDEWALK CLAIMS COMPRISE 7.2% OF ALL LITIGATIONS
- \* SIDEWALK CLAIMS COMPRISE ONLY 3.4% OF ALL CLAIMS
- \* SIDEWALK CLAIMS ACCOUNT FOR 6/1% OF ALL DOLLARS
- \* SIDEWALK CLAIMS ARE MORE EXPENSIVE TO ADJUST  
ON SITE ADJUSTING, ; WITNESS STATEMENTS, PHOTOS,  
DIAGRAMS, PROPERTY OWNERSHIP SEARCH...
- \* LITIGATED SIDEWALK CLAIMS ARE MORE DIFFICULT TO DEFEND  
NOTHING CURRENTLY DEFINES WHAT TYPE OF DEFECT IS  
REASONABLE
- \* SIDEWALK MAINTENANCE IS DIFFICULT FOR MUNICIPALITIES TO  
MONITOR AND ENFORCE  
THE SMALL THE MUNICIPALITY THE GREAT THIS PROBLEM  
BECOMES

EXHIBIT 28  
DATE 2/10/95  
HB 382

TESTIMONY

HB - 382

SPONSOR - REP. PAVLOVICH

IDEN - BOB WORTHINGTON  
PROGRAMS ADMIN - MMIA

MMIA INSURES 108 INCORPORATED MUNICIPALITIES ACROSS  
MONT.

SIDEWALK LIABILITY A SIGNIFICANT EXPOSURE FOR GOVERNMENT

SOME REPRESENTATIVE STATISTICS

AVG COST PER CLAIM - \$3,320 (ALL) -- \$6,148 (SDWLK)  
180% GREATER THAN AVG CLAIM COST

SIDEWALK CLAIMS 3.4% OF ALL CLAIM YET 6.47% OF ALL  
DOLLARS INCURRED

SIDEWALK CLAIMS 2.1 TIMES MORE LIKELY TO BE LITIGATED  
7.2% OF ALL LITIGATIONS ARE SIDEWALK CLAIMS

SIDEWALK CLAIMS ARE DIFFICULT TO DEFEND AS NOTHING  
CURRENTLY DEFINES **WHAT IS REASONABLE** WITH RESPECT TO  
BOTH THE SIZE OF THE DEFECT AND THE TIME TO REPAIR

SIDEWALK CLAIMS ARE MORE EXPENSIVE TO ADJUST THAT AVERAGE  
CLAIM

ALL INVOLVE BODILY INJURY  
ON SITE ADJUSTING, WITNESS STATEMENTS  
PHOTOS, DIAGRAMS, PROPERTY OWNERSHIP SEARCH

SIDEWALK MAINTENANCE PROGRAMS FOR A MUNICIPALITY ARE A  
DIFFICULT ISSUE.

COSTLY PROGRAMS - HEIGHTENED BY DIMINISHING  
REVENUES

POLITICALLY UNPOPULAR TO REPAIR  
DIFFICULT TO MONITOR AND ENFORCE  
**THE SMALLER THE COMMUNITY THE MORE ACUTE  
THE PROBLEM BECOMES**

THIS BILL PROVIDES AN AVENUE TO ESTABLISH WHAT IS  
REASONABLE

ALLOWS GOVERNMENT TO DEVELOP STANDARDS FOR ADDRESSING

THE PROBLEM

REQUEST THAT COMMITTEE RECOMMEND A DUE PASS FOR HB 382

TESTIMONY OF VIVIAN MARIE

IN FAVOR OF HOUSE BILL 444

This bill has three main components. First, it changes some language to be gender neutral. Second, it allows for modification of visitation or custody if ANYONE IN THE HOUSEHOLD has been convicted of certain listed crimes which affect children. Currently, the law applies only to the actual parents of the child at issue; this amendment expands the provision to the rest of the parent's household. Third, the bill adds to the things a court should consider when determining the "best interests of the child." It is this third area which I will address, although I certainly support the other two changes.

The impetus for these changes was the problems our clients faced when the Child Support Enforcement Division (CSED) pushed a non-custodial parent for child support. All too often, pressure to support a child results in an action to change custody so as to avoid payment of support. Since CSED does not provide legal help in defending against these actions, the custodial parent (AND the child!) may face heavy legal costs, not to mention emotional costs. There are four elements added to the "best interests" statute which we believe we alleviate some of these problems. I believe you will find that each one comports with your common sense of what children need.

First, the bill includes a presumption in favor of the primary caregiver. The term "primary caregiver" refers to that individual who prepares meals, gets the child off to school or daycare, goes to school events, arranges for routine medical care, shops for clothing, bathes and puts the child to bed at night. In other words, the day-to-day parenting tasks, which require a great deal of time and attention to detail. The Uniform Marriage and Divorce Act, adopted by Montana in the mid-1970s, stresses the importance of stability in a child's life. Our current statute dealing with best interests instructs a judge to consider the child's relationship with each parent, along with many other factors. The statute does NOT, however, give any particular weight to any of these factors. Maintaining a child's accustomed primary caregiver needs to be given substantial weight in making custody and visitation decisions. In addition, we hope this section will help prevent child-snatching because the mere fact that a child is currently in the snatcher's care will not help the party prevail before the judge. At least one other state, Virginia, has enacted a statute in favor of the primary caregiver. Several other states have similar provisions in their caselaw.

Second, the bill presents a presumption that a move to change custody, brought within six (6) months of an action to enforce support, is vexatious. Such a presumption is not unique; for example, our landlord/tenant law includes a presumption that a move



to evict a tenant, brought within six months of the time a tenant makes a complaint, is motivated by retaliation. The section is designed to make a non-custodial parent consider carefully whether to begin such a legal action. The intention is to prevent taking up the court's time with baseless challenges to custody which are not motivated by concern for the child, but an attempt to avoid paying support or to pressure the custodial parent into settling for a lower amount of support.

Finally, I will address the third and fourth proposed changes together, since they both address payment for a child's needs--one relating to birth costs and the other to ongoing support. One of the things I have trouble explaining to my clients is the part of our family law which says that payment of support and the exercise of visitation rights cannot be connected. In other words, support must be paid whether the custodial parent is allowing visitation or not. Similarly, visitation must be allowed whether support is paid or not. There is logic to that policy, and I agree with it. It should remain as it stands. However, common sense tells us that a parent who really cares will do his or her best to see that the child has what it needs financially. So when a judge faces a parent who asks for a change in custody, a parent who has been really delinquent in paying for a child's needs, the judge should be able to consider that delinquency. Right now, this is not a factor a judge is asked to consider. You will notice that it is carefully drafted to allow for parents who may not even be aware of the child's existence, or aware of a need. It allows for parents who are not able to contribute financially. It comes down hard, though, on those who simply refuse to pay.

In concert, these changes encourage custodial parents to cooperate with CSED, they encourage non-custodial parents to pay what they can in support, and they encourage all parents to be seriously involved with their children on a day-to-day basis. They bolster a child's stability and security, prevent vexatious causes which clog the courts, and make for better custody decisions when a case does reach the courts. I hope that you will support these changes, and invite any questions.

February 10, 1995

House Judiciary Committee Testimony - Representative Bob Ream

The bill I bring you today is a simple bill, but it is powerful in what it does. It is about discrimination and today's hearing is about fear and how we deal with it. I introduced this same bill 2 years ago and many of my fellow legislators urged me not to introduce it this time. However the hearing 2 years ago was a powerful one and it had a big impact on me - in the end I decided I couldn't not do it. I could not succumb to fear and through this hearing I hope we can shed some light on fear. Dealing with fear with an open mind and listening, will lead to understanding, understanding leads to compassion and compassion leads to love.

Too often fear, fear of the unknown, leads to anger, anger to hatred, and hatred to violence. Last week 2 white men assaulted a black man in Butte, last year there was violence toward Jews in Billings. Today you will hear about violence towards another minority. When will it ever end? It is all the same, and many of the same people are involved..

Opponents will try to tell you that homosexuality is a question of choice. It simply is not. Much more evidence has come in during this past year. Last summer there was an entire cover story in TIME magazine about homosexuality. Recent studies have shown that not only is homosexuality genotypically predetermined but that certain phenotypic characteristics express themselves as well.

There are homosexuals throughout Montana, undoubtedly some are friends or neighbors of yours, but you may not know about it. Why not? Because of their fear, fear of how they will be treated in this society. The homosexual population of Montana is probably at least as big as the Native American population.

I was born and raised on my grandparents farm in Wisconsin, where I learned love and compassion and understanding of others. When my family moved to the Washington D.C. area in 1949 I was shocked at the white line in the middle of the buses that separated whites and blacks. I subsequently lived in Thailand, India and the Philippines, where I graduated from high school, with a class representing many ethnic and religious backgrounds. These are all places where I was an obvious minority, but I never once had to feel the fear that homosexuals in this country feel. It simply astounds me that some of my fellow Montanans are in such fear of somebody different than they, that they develop such deep-rooted hatred for other fellow Montanans.

We have made progress in this country over the years. Last May I visited Washington D.C. and there were no white lines in the middle of buses. But fear, anger, hatred, and violence still persist. In the 1930's women gained their civil rights but violence persists, in the 1960's blacks gained their civil rights but violence persists, and in the 1990's we should be providing civil rights to homosexuals. We have to start somewhere in order to gain understanding, compassion, and love. This bill provides that fellow Montanans will not be discriminated against not only based on race, creed, religion, color, sex, physical or mental disability, age, national origin, or marital status, but also based on their sexual orientation. It not only prevents discrimination against homosexuals but also protects heterosexuals from discrimination. All individuals have a right to be judged on their merits rather than stereotypic assumptions about them because of their sexual orientation. It is better to light just one little candle than to suffer in the dark. You can be a committee of light or a committee of darkness - the choice is up to you.

*Testimony in favor of House Bill 388 by David Orendorff, a United Methodist Pastor*

Mr. Chair and members of the House Judiciary Committee, thank you for this opportunity to testify before you on House Bill 388. My name is David Orendorff and I am a United Methodist pastor in Helena.

The Social Principles of the United Methodist Church on the rights of homosexual persons states:

"Certain basic human rights and civil liberties are due all persons. We are committed to support those rights and liberties for homosexual persons. (United Methodist Book of Discipline, paragraph 71G)"

Basic human rights must include employment, housing, financial transactions and education. It is disingenuous to argue that sexual orientation is not used to deny these human rights. Fear, ignorance and self righteous bigotry have often driven persons of same sex orientation to hide their preference from employers, landlords, realtors, financial and educational institutions. No less than color or particular religious or creedal choices, sexual orientation has been used to justify discrimination.

The proposed amendments do not offer special protection to a sexual orientation any more than the current reading offers special protection to United Methodists or Baptists. The amendments here do not recommend or condone a sexual preference any more than the current reading recommends or condones being a United Methodist or of the Christian Coalition. Instead, these amendments offer to a group, which clearly suffers discrimination, equal protection for a few basic human rights just as diverse religious groups enjoy such protection.

To exclude by omission such a clear case of discrimination against an identifiable group of persons is in fact to publicly condone and tacitly encourage the discriminatory practices persons of same sex orientation suffer. If protection from discrimination in employment, housing, financial transactions, and education is good for United Methodists and the Aryan nation, then it is also good for sexual orientation. If this is not so, then we recede into a nation in which power and violence create truth and all our minority characteristics and ideas are subject to persecution. I encourage your favorable vote on HB 388.



EXHIBIT 31  
DATE 2/10/95  
HB 388

P.O. Box 775 • Helena, MT 59624 • (406) 442-9322

**TO: Representative Clark, Chair, House Judiciary Committee  
and  
Members of the Committee**

**RE: Support of HB 388**

I am Sandra Hale, Executive Director, of PRIDE! - Montana's statewide organization for lesbians, gay men, and bisexuals. Our mission is to secure the constitutional rights of privacy, equal protection under the law, and human dignity for this community.

PRIDE! enthusiastically supports HB 388. Without civil rights legislation that expressly includes protection based on sexual orientation, gay men, lesbians, and bisexuals face overt acts of discrimination with no legal recourse. Gay people can legally be fired, kicked out of their apartments, and refused service at a restaurant or hotel based on their sexual orientation.

In February of '94, Newsweek released the findings of a nationwide poll in which 74% of all Americans favored protecting gays from job discrimination. And in Montana, a statewide poll conducted by faculty at Eastern Montana College several years back found that 53.5% of Montanans supported extending civil rights to homosexuals. Approximately 130 city, county, and state jurisdictions in the U.S. have passed some legislation that bans discrimination based on sexual orientation. Eight states have passed comprehensive statewide laws banning discrimination based on sexual orientation in one or more of the following areas: public employment, public accommodations, private employment, housing, education, credit and union practices.

Additionally, gay teenagers are two to three times more likely to attempt suicide than are other teenagers. Creating a safe and just community for these youth to grow up in, to receive a quality education, and to become productive citizens of Montana will go a long way to ameliorate the anguish, stigma, and isolation that our gay and lesbian youth are presently facing.

HB 388 is not about morality; it is not about lifestyles. It is about extending to all Montanans their basic civil rights, and to extending these rights to a group who presently have no legal recourse in Montana against discrimination in employment, housing, education, and other areas. As you will hear, many lesbians, gay men, and bisexuals are afraid to step forward and tell their stories. The fear and oppression is  
(over)

"Lesbians, Gay Men and Bisexuals united to secure our constitutional rights to privacy, equal protection and dignity."

made even more severe in Montana where the state's Deviate Sexual Conduct Statute makes consenting adults loving each other in the privacy of their own homes a felony, thus making the reporting of civil rights' violations for lesbians, gay men, and bisexuals a even more terrifying proposition. The effects of this state-sanctioned discrimination settle over the lives of every lesbian, gay man, and bisexual in Montana even before they face the day-to-day experiences of trying to find a job, an apartment to rent, a school to attend, or get a loan for a car or home. All we are asking in HB 388 is that our everyday, work-a-day lives be granted the same civil rights as every other Montanan.

Even if you find the concept of homosexuality a stretch for your comfort zone, as a lesbian standing before you, I submit that I have a basic human right to be protected from discrimination in those parts of my life that affect whether or not I will be a free and productive Montanan. It wasn't so long ago that legislators and policy makers also found it a stretch to consider Afro-Americans, Indians, and women part of the human race and to extend them their civil rights. The time has come to stretch again. To extend basic rights to yet another group of Americans who have up to now been kept from experiencing "liberty and justice for all!"

During the 1993 legislature, while hearings were being held here in Helena on whether or not to exclude Montana's homosexual citizens from the Deviant Sexual Conduct Law so they wouldn't be felons, while you were debating here about whether or not gay bashing was or wasn't a hate crime, we were having our very own hate crisis in Billings. At first the Billings Gazette wasn't even reporting it, hoping it would go away. Fortunately, we had a police chief who knew very well that bigotry doesn't just go away.

During the Martin Luther King march that night in 1993, hate literature was distributed by the KKK that offended nearly everyone, and a young homosexual man living in Billings was named by name in the literature. Ugly signs were posted on the door of the Jewish synagog and there were several other specific incidents of hate such as a broken window, destroyed grave markers and hate graffiti on the house of an Indian woman.

Under the guidance of the Montana Association of Churches, the Human Rights Network, and the chief of police, the whole community was able to stand together in this crisis and give a very clear message to the hate mongers:

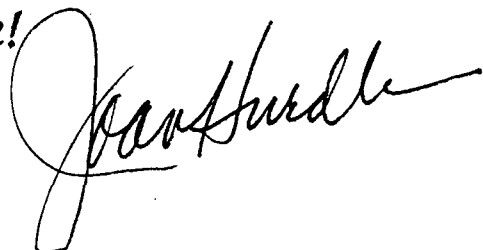
## *not in our town*

We wrote a statement that named every specific group that we could think of from blacks to native americans, and specifically included and named in that group were gays and lesbians. Some balked, a lot hesitated, but in the end no group was excluded from our statement. We had to stand together, the whole town wanted to stand together, and we did, hand in hand. We had a rally and Senator Burns was one of the speakers.

You see, in Billings, while you were debating the pros and cons here in Helena, we learned that if discrimination is wrong, it is wrong in every case. If any group is excluded, then discrimination is allowed. So our statement included everyone, and thousands of people ended up signing it and hundreds of organizations supported it because it specifically named everybody and it included everybody. It was published in a full page ad in the Gazette and it included gays and lesbians.

This is what we learned in Billings and we put a stop to the acts of hate and received national recognition for our inclusion.

If discrimination is wrong, it is wrong. Now it is time for the whole state to stand together and say: *not in our state!*



To Bob Clark, Chairman of the House Judiciary Committee, and members of the Committee:

Recently a crime was committed against me on the basis of, I believe, my sexual orientation, an orientation I did NOT choose and have no control to change. Being gay is inherently the way I am. There is absolutely NOTHING I can do about it - not if my life depended on it.

I understand that a crime committed against another that is violent in nature, committed for no other reason than that other's intrinsic way of being, is classified as a "hate crime", with the offender being tried in court accordingly. For reasons I do not understand, the state of Montana, UN-like other states, does not classify violent crimes against homosexuals, committed solely due to their orientation, as Hate Crimes.

This said, I offer here testimony of a crime committed against me because of the "WAY I AM", but will not be officially recognized as a crime of hate under current state law.

Early in October of 1994, while I was away from home for a couple of days, a person, or persons, came to my home <sup>a tipi</sup> during the middle of the night, doused ~~the~~ the interior with fuel, and ignited it. As one could expect, everything combustible was reduced to ashes. There was nothing to salvage. Besides losing many things of great sentimental value, the tipi contained thousands of dollars worth of original Plains Indian lodge furnishings, trappings, and various other artifacts dating from the 19th century.

As far as I knew I had no enemies in the area. I've never knowingly provoked, insulted, or intentionally offended anyone in any way I can think of. Having



moved to the area in June of '94, I was a new comer and was living on land belonging to a friend while I looked for land to purchase myself. Though I generally kept to myself, the fact that I'm a gay man had become known to at least a few of the locals. I'd confided in someone I trusted but the word soon spread.

I've been told that I was the talk of the local bar at one time or another, and was referred to there as "the fairy on the hill" among some of the regular patrons. I personally don't frequent the bar, so if I'm known by its regulars it's by force only, with the exception of one fellow who had rented out some storage space to me.

Thanks to some caring people in the area, I have a cabin to live in for the winter, free of rent. However, I no longer feel very comfortable or safe here, especially since hearing of the latest rumor that's gone around, which is that I have a "thing" for young boys, and regularly bring them home with me. Considering this and other lies that are likely being said about me, I have resorted to wearing a gun on my hip most of the time. I am a gentle and non-confrontational kind of guy, but with what's been done and said, I feel the need to be prepared for anything at this point. More than anything though, I hope that being visibly armed will be discouragement enough. It's sort of my way of saying, "you DON'T want to mess with me".

An investigation of my case is currently being handled by the local county sheriff's department.

I sincerely hope that the laws regarding the prosecution of hate crime offenders in Montana will be broadened to include gay and lesbian victims of these crimes. It would only be fair.

Eric Henderson

- A BRIEF SUMMARY OF THE POLICE INVESTIGATION -

The primary investigating officer has confirmed that, at a residence a short way up the road from where my camp was situated, a small party, or, more accurately, a drinking get together of ~~four~~ men, was going on through much of the night that my tipi was burned. The man who owns the house and threw the little party is one of the regular bar patrons whom I'm told has made many crude comments about my sexual orientation while drinking at the bar. The officer has also confirmed that I was the topic of conversation as the run went down at this particular get together.

When the host of the party was initially questioned by police, he failed to mention three of his guests (three half of who was there) when asked who was at his home that night. These circumstances led to the individuals at this residence on that night becoming prime suspects in the case. The three guests whom the host ~~of~~ neglected to mention were from out of state it turned out. A background check of these visitors revealed that they each have active warrants for their arrests for various crimes of the past. The officer in charge of the case has informed me that these three men will be taken into custody in their home states, and will be offered leniency for the crimes for which the old warrants had been issued if they will provide information about what occurred on the night of the arson, if it leads to the conviction of the offender(s).

TESTIMONY IN FAVOR OF IIB 388

BY: CHRISTINE KAUFMANN, MONTANA HUMAN RIGHTS NETWORK

The Montana Human Rights Network is a private non-profit corporation, consisting of a statewide office and 12 local human rights groups. The staff answers to a board of directors from across the state and about 3,500 Montanans who support our mission with their dollars and their activism. We are not a part of the Human Rights Commission, the office of state government charged with enforcement of anti-discrimination laws.

The Network is a pro-family organization. We represent all kinds of families, regardless of their race, creed, religion, color, national origin, or sexual orientation.

Our mission is to help families counter bigotry, hatred, and intolerance in their communities across Montana, no matter who the targets are. We do this by helping local folks speak out against the intolerance and by celebrating the diversity among us. Because gay men and lesbians are frequent targets of intolerance and discrimination, we work actively toward a public policy where gay and lesbian citizens are afforded the privacy, dignity, and equal protection under the law that is guaranteed in the Montana constitution to all citizens. We therefore stand firmly in support of HB 388.

There is a common misconception about civil rights law, that I would like to try to dispel. Civil rights laws do not provide special rights to minorities. Civil rights laws protect all of us. All of us are protected from discrimination in employment based on our race, for example. If you have constituents who are concerned that "white" men can't get jobs any more, civil rights laws provide protection. If you have constituents who believe Christians are being discriminated against, civil rights laws provide protection. If, however, you have constituents who believe that homosexuals are taking over, heterosexuals will not be protected from discrimination....unless you pass this bill.

Now to be honest, I don't think "white," Christian, heterosexual men, as a group, are experiencing discrimination, but if they were, civil rights laws would be their protection. I do think gay men and lesbians experience discrimination, intolerance, and often violence, just because of who they are. I know there is debate about whether homosexuals make up 10% or 1% of the population and about whether gay men and lesbians are born, or choose. I could give you my opinion, but I don't think it's relevant to this bill. The issue is discrimination. Percentages and genetics don't have anything to do with it. Montana's Buddhists probably weren't born that way, and probably make up less than 1% of the population, yet we believe they should not suffer discrimination.

You can vote for this bill even if you believe homosexuality is wrong. The only question is, do you believe that Montana citizens should be fired from a job for reasons that have nothing to do with their job performance? Do you believe Montana citizens should be denied housing for reasons that have nothing to do with their payment of rent, or their care of the property?

You can vote for this bill even if you don't like or agree with homosexuals. Some of us in this room don't agree with Muslims, or Buddhists, yet we don't think they should be discriminated against. Some of us struggle with our own prejudice against people of different races, yet we don't think people of different races should be discriminated against.

You'll hear testimony from the opponents that has a lot more to do with society's irrational fears, than with this bill. You may hear about the secret homosexual agenda. There is an agenda, but it's no secret--gay men and lesbians want to be treated with equality under the law. Their parents, family and friends want their loved ones treated with equality under the law. It's an agenda of fairness and dignity for all of us.

This bill has nothing to do with morality, special rights, quotas, gay marriages, or private sexual practices. It has to do with people--your constituents, your neighbors, your children, your colleagues...the banker, the business person, the postal carrier, the police officer... the person sitting next to you in church, at the basketball game, at the concert, or at your dinner table. People who may not dare to tell you who they really are, because they might lose their job, or their home, or the support of their loved ones.

For your constituents, we urge you to vote in favor of HB 388.

I am a lesbian--a woman who loves another woman. I plan my future with her, discuss my deepest feelings with her, laugh with her, cry with her--and because of this, I risk incurring the hatred and disgust of others.

I used to believe that the only difference between homosexuals and the heterosexual majority is that homosexuals feel romantic love toward members of their own gender. I was wrong. I now believe that the biggest difference between a person who is openly homosexual and a person who openly hates homosexuality is this: the person openly owning his or her homosexuality is courageously acknowledging that his or her soul would wither and die without this congruence; the person who views the homosexual with disgust is acknowledging his or her fear and constricted world-view.

We--my brothers and sisters and I--have in common a feeling of "rightness" about honoring our orientation. We also share the experience of being on the outside of a society that refuses to validate us as human beings.

Homosexuality is not a choice. It is a decision to accept and honor the entirety of oneself. It means loving and caring and sharing one's dreams, hopes and fears with another person.

That I made the decision to fully own who I am--a woman who is a lesbian--is a testimony to my courage, my honesty, my wholeness and my faith that the God who created all of us does not make mistakes.

Please understand that I am not criticizing those of you who disagree with the way in which I fulfill my very human need for love and affection. Only hear me when I tell you that my needs are the same as yours. They differ only in their manner of expression. Just as artistic creativity is expressed in a multitude of ways--through painting, through poetry, through music--so our most basic needs are also expressed differently.

It is our society that encases us in a set of stereotypes designed to maintain the status quo. Until we are free to explore the wonders of our individuality, we will continue to be bound by the fear and the artificial stereotypes that presently exist.

I am not urging that every person attempt a homosexual lifestyle--only that we all allow ourselves to experience, without fear and hatred and anger and blindness, the "differentness" of each human being. I am suggesting that we choose to express the pure, Christlike love--agape love--that lives in each one of us; that we refuse to hate and rebuke others. Each of us is a unique creation of the Lord. I believe that God makes each human being with tenderness and extreme attention to every detail--and that to dishonor even one of the Lord's creations is to dishonor all of them.

*Suzanne A. Grubbaugh*

EXHIBIT 36  
DATE 2/10/95  
HB 388



**Carl J. Donovan**

P.O. Box 1201-Great Falls, MT. 59403  
127 20th Street  
Black Eagle, MT. 59414

February 9, 1995

Telephone (408) 727-4685

Representative Bob Clark, Chairman  
House Judiciary Committee  
Montana State Legislature (1995 Session)  
Helena, Montana

Mr. Chairman and Members of the Committee:

My name is Carl J. Donovan and I am here today to give testimony on HB 388 as a third generation Montanan. I strongly favor House Bill 388 for several reasons.

This bill will first of all, provide protection based on sexual orientation under Montana's Human Rights Laws and extend a basic civil right that gays, lesbians and bisexuals have always been denied in the great state of Montana. Our US Constitution guarantees that all US citizens have certain rights including free speech and association, full equality and privacy. But the sad reality is that many remain the target of hatred and bigotry because of characteristics most are born with. We in Montana can join the visionary states that have already enacted similar legislation which protects those that are the target of hate and violence,

Employment is something everyone needs to survive today. To be denied a job based simply on your sexual orientation has no bearing on whether or not you are qualified or can do the job. This bill will help guarantee that I, as a tax paying Montanan, will be forever protected from unscrupulous prospective employers who would otherwise deny me the opportunity to work for no other reason than who I might sleep with at night. This bill will also protect Montanans from being passed over for job promotions because of their sexuality. Most working adults expect to advance in their jobs.

I am fortunate that I have never personally experienced job discrimination that I know of. However, that does not negate the very real instances of employment discrimination that occur, possibly on a daily basis in Big Sky Country. I have witnessed first hand such acts and the aftermath. A close friend of mine, after being terminated when his new supervisor could not deal with his sexuality, moved to a new community out of state to find work. He was murdered. Had this bill existed then, he may still be here instead of being buried here.

Every year in this country, and I know from personal experience that Montana is no exception, gays and lesbians are denied access to restaurants, hotels, and other public accommodations simply because they are gay or lesbian or are perceived to be so. Friends and I had a restaurant hostess refuse to seat us several years ago, just because we all wore an earring and she perceived us to be gay. She told us we probably would not feel comfortable with the clientele there. I was there to eat, not have sex. Since it was a restaurant, it was exactly where I wanted to be. I, however, was not welcome because I was gay. It should be irrelevant to business and other entities and organizations in this state what your orientation is when you are seeking the service they provide. HB 388 will help to ensure that this becomes reality and will afford us needed



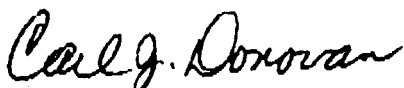
protections as we encounter the virulent, open anti-gay hostility sweeping America as we strive for laws, policies and regulations that empower us.

In 1993, after I gave testimony on gay rights legislation and my name was listed in the Great Falls Tribune, someone threw a brick through my picture window, at which point, I started having difficulties and eventually had to buy a house after renting with no problems from this landlord for 8 1/2 years. This was extremely traumatic for me both physically and emotionally as I struggled to find out what I had done wrong to warrant a change in the way the landlord treated me. I came to realize I had done nothing wrong. It was merely the fact that I am openly gay that altered this individual's perceptions of me. My history of always paying the rent on time, taking care of the yard needs and improving the value of her property was now irrelevant. This was housing discrimination. To face loss of my home, with shelter being a vital basic need for survival, just because I am gay is just one more example of why sexual orientation needs to be included as a protected class under Montana's Human Rights Act.

Federal laws do not offer protections based on orientation. This is a weakness which HB 388 will correct for Montanans by giving gays and lesbians a more level playing field as they strive for the equal protections guaranteed by the Constitution, allowing them to be judged not by their orientation, but in a manner that we all want to be judged by, their abilities.

Thank you for your time in letting me express my opinion on HB 388.

In Pride!

A handwritten signature in cursive script that reads "Carl J. Donovan".

Carl J. Donovan

Mr. Chairman and members of the Committee,

My name is Corky Smith. I live near St. Regis where my husband, Chuck, is lead electrician at a lumber mill. All of our children were fortunate to be raised and educated in the rural area between Noxon and Thompson Falls. There they learned values of independence, personal integrity, compassion and respect for others. My gay son, Aaron, is an integral part of our family and shares these values. But because he is gay, he does not have the same protection from discrimination that is already in place for the rest of our family, under the current Montana Human Rights Act.

In Montana, no one that is gay or perceived to be gay, has any protection from discrimination based on sexual orientation. My son can be barred from renting or buying a home, getting or keeping a job, eating in a public restaurant - all these things can be denied him because he is gay.

For all of us our sexuality is only a part of who we are, and our affectional orientation (whom we love) does not determine our values or our contributions to society.

We are one of many Montana families with gay, lesbian or bisexual members; aunts, uncles, brothers, sisters, parents, grandparents. All of these family members and friends have the right to be free from discrimination.

Chuck and I are volunteers with PFLAG - Parents, Families and Friends of Lesbians and Gays, an international organization that promotes the health and well-being of gay, lesbian and bisexual persons through support, education and advocacy. The Montana Chapter of PFLAG has members scattered statewide, from Columbia Falls to the Bitterroot to Billings. We concur with a statement adopted by the National PFLAG Board of Directors which says, "We adamantly defend the rights of our gay, lesbian and bisexual children to live in a society that accords them the same dignity, privileges and protection accorded all other citizens."

I love and am proud of all of my children. I respect and celebrate their differences. How can it be explained to one son that in his own home state, a state that is known for encouraging individualism and strength of character, he does not have the same rights as other citizens, including his own family?

Aaron can be discriminated against because of who he is and whom he loves. This is not right for any of us. Please change this by passing House Bill 388.

DATE 2/10/95

HB 388

To whom it may concern,

I have requested that this letter be read on my behalf due to the importance of this issue and the direct effects that House Bill 388 will have on my life if it is passed. I know first hand the effects that discrimination has on a persons life. I am a lifetime resident of Montana, and a woman of color. I have been descriminated against all of my life but none has been as devistating as the descrimination against me because of my sexual preference.

I was fired from a job that I very much enjoyed due to my sexual preference. I have a family and my family comes first in my life. This was confusing to my employer due to the fact that I am not married, and do not have a biological child of my own. When my family needed me I needed to be there for them, and my employer did not understand. After working for this company for three months, I was directly questioned by my employer as to why I cared so much about what happens in my room mates life, and I answered honestly. On October 7, 1994 I came out to my employer and told my boss, the owners daughter, that I am a lesbian. The next day when I went in to work I was released, my employment had been terminated.

I had done a good job for that company and was very sad about the way I was treated. I tried to file for unemployment, but the company that I had worked for faught it, saying that I hadn't done a good job for them. I was afraid of more descrimination if I had written the real reason for my being terminated on the unemployment papers, so I dropped the issue. This is an unfair practice of descrimination that companies like this use, and will continue to use unless something is done to stop them. I can no more change my sexual preference than I can change my color, and shouldn't have to to be allowed to continue to be employed.

Thank you very much for allowing me to be heard. I would like to be there myself, but due to the fact that this company is based in the town where I live, I am afraid of the repercussions that my speaking out may stir up. I must remain anonymous in my letter, but don't let that make you think that I am not serious, or that this issue is not serious. This issue is very serious and I am hoping that I have conveyed that to you through my experience.

# MONTANA WOMEN'S LOBBY

P . O . B O X 1 0 9 9 H E L E N A , M T 5 9 6 2 4 4 0 6 - 4 4 9 - 7 9 1 7

EXHIBIT 39  
DATE 2/10/95  
HB 388

Mr. Chair and members of the committee my name is Linda Gryczan. I am speaking for the Montana Women's Lobby, a bi-partisan group representing over 50 organizations and more than 2,000 individuals across Montana.

The Montana Women's Lobby supports SB388 because we are opposed to discrimination and know that those who are discriminated against deserve to have legal recourse. As others have testified here, lesbians and gay men face discrimination in Montana. The most common reason people give me for pretending to be heterosexual, is because they fear for their job. This is not an unreasonable fear. People have been fired. Some have lost their homes.

And yet if you, Representatives were denied these same opportunities because of your religion or your gender, you would have legal recourse. If you were denied employment because of your religious beliefs, no one even asks if you chose your religious beliefs or if you were born that way. Tell me why I and other lesbians and gay men do not deserve the same civil rights protections that you yourselves enjoy.

I urge that you vote yes on SB388.

My name is Sandra Boggs, I am a heterosexual and it is very important to me that sexual orientation be included as protected status under the Hate Crimes bill.

I became concerned with this issue after Jackie, a very dear friend of mine, was nearly beaten up by two teenage boys at a Mini-mart. The boys approached her and because of the way she looked and dressed they called her a dyke, grabbed the front of her shirt, threatened her, and told her they were going to beat the shit out of her. Luckily Jackie was able to break away from them and make it to safety. Others are not always so lucky.

Since I have become concerned with this issue, and started advocating protection for gays and lesbians, I have been harassed at least 3 times due to my perceived sexual orientation.

I encourage you to vote to include sexual orientation in this bill, this status is badly needed. If you have any doubts of the need, I ask you to look around and notice the hatred that is directed at gays and lesbians daily. Then I ask you to look into your hearts and ask yourself this question: "If your daughter had been Jackie would **you** stand by and do nothing to prevent her from being hurt?

Would you say "Too bad you got hurt, but there's nothing I can do. They thought you were lesbian so it was okay for them to harass and hurt you." Tough break.

You have the opportunity now to take a stand, I encourage you to do the right thing, ~~include sexual orientation as a protected status~~. Thank you.

Vote yes on HB 388

Only those who promote intolerance and love to hate, could be opposed to this bill.



EXHIBIT 41  
DATE 2/10/95  
HB 388

P.O. BOX 3012 • BILLINGS, MONTANA 59103 • (406) 248-1086 • FAX (406) 248-7763

February 10, 1995

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, here today as Executive Director of the American Civil Liberties Union of Montana, celebrating 75 years of defending traditional American values as represented in the Bill of Rights. I am also here as a husband and parent, a person, probably like all of you, whether you realize it or not, who has friends and relatives who are gay and lesbian.

I am here to support HB 388, because all people are entitled to the same rights, liberties, freedom from harassment, and freedom from discrimination, regardless of their actual or perceived sexual orientation. Denial of privileges and rights to persons because of their sexual orientation deprives them of civil liberties. Laws and public policies, practices and regulations based on sexual orientation raise both equality and privacy concerns.

Discrimination based on sexual orientation, like that based on race, alienage, age, national origin, political persuasion, religion, disability or gender, denies individuals equal protection of the laws. The right to be treated equally is grounded in the Fifth and Fourteenth Amendments to the U.S. Constitution, and is reflected in numerous statutes and regulations. It is based on the premise that individuals should be treated as individuals and not prejudged on the basis of characteristics or behavior attributed to a group of which they are perceived to be members.

Montana's Constitution, in Article II's Declaration of Rights, Section 4, further enumerates "The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws." This bill fundamentally is about fairness, not special rights, but equal rights for all Montana's citizens. I urge you to pass HB 388.



Suzanne A. Grubaugh  
2113 Livingston  
Missoula MT 59801

EXHIBIT 42  
DATE 2/10/95  
HB 988

February 15, 1995

Representative Bob Clark, Chairman  
House Judiciary Committee  
Montana State Legislature (1995 Session)  
Helena MT

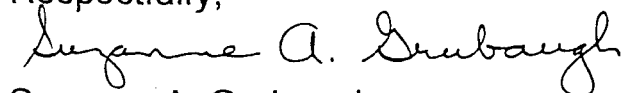
Dear Representative Clark:

I would like to thank the House Judiciary Committee for the courtesy extended to us when we testified before them on February 10, in support of HB 388. I had anticipated that some audience members might be inconsiderate, and that, if that happened, they would not be asked to control their remarks. It was a relief to hear your opening statements in that regard.

This was the first time I have spoken out publicly in a place where it might not be safe to do so. Because of your model of consideration, and because of the respectful demeanor of the Committee members, the House Judiciary Committee Hearing became another safe place for me to be. The knowledge that I will not be the target of negative comments is a gift that I do not often receive.

Even though the Bill was tabled during this session, I am certain that, in the future, it will pass the Committee and will continue on to the people of Montana for their vote.

Respectfully,



Suzanne A. Grubaugh

Mr. Chairman, members of the committee:

For the record, my name is Laurie Koutnik, Executive Director of Christian Coalition of Montana, our state's largest family advocacy organization. I rise in opposition to HB 388.

The legislation you have before you today is virtually the same legislation that Rep, Reams introduced last session with the exception of three words that are omitted . . . actual or perceived.

The question still remains the same as last session: "Why would we want to consider giving special class protection to an identifiable group whose distinguishing characteristic is based on their sexual orientation or sexual behavior, when this behavior is a felony offense in the state of Montana?" I submit to you that the citizens of Montana reject this notion today as they did last session.

As parents, when our children engage in a behavior that we find unacceptable, we do not reinforce that behavior by rewarding it.

The Constitution of the United States does not confer a special rights based on these sexual behaviors. In his concurring opinion in Bowers vs. Hardwick, Chief Justice Burger wrote: " There is no such thing as a fundamental right to commit homosexual sodomy. As a court notes . . . the proscriptions against sodomy have very ancient roots. Decisions of individual relating to homosexual conduct have been subject to state intervention throughout the history of western civilization. Condemnation of those practices is firmly rooted in Judaeo/Christian moral and ethical standard. Indeed homosexuality was a capital crime under Roman law. To hold that the act of homosexual sodomy is somehow protected as a fundamental right would be to cast aside millennia of moral teaching. (Bowers at 197).

Nor can it be argued that somehow Montana's Constitution is broader in granting this as a right when this behavior is in complete defiance of state laws. However, the U.S. Supreme Court has consistently held that the state's legislature has the police power which is very broad and comprehensive and embraces the maintenance of good order and quiet of the community and preservation of the public morals ( Carter vs State of Ark., 1973)

Rights currently covered by present anti-discrimination statute with the exception of creed and religion, are constitutional rights under the First Amendment of the U.S. Constitution because they are immutable, inherent, non-behavioral characteristics of age, gender, handicap, race, or national origin. Former Chairman of the Joint Chiefs of Staff, Colin Powell who opposed homosexuals in the military, stated, "Skin color is a benign, non-behavioral characteristic. Sexual orientation is perhaps the most profound of human characteristics. Comparison of the two is a convenient but invalid argument."

In fact, homosexual activists have no basis for equating their struggle for special legal privileges with that of the civil rights movement. Homosexual behavior - which one can choose or choose not to act out, validated by the many who leave the lifestyle- cannot be equated with an

immutable characteristic, such as race or ethnic origin, over which one has no control. Or to put it another way, one can become a former homosexual, but not a former Hispanic or Native American. Tom Green, who testified before this committee last session, gave credence to one who was entrenched in the homosexual lifestyle from an early age and has left that behavioral pattern to become a heterosexual married man. Similarly homosexual behavior could not be equated with religious belief, which is protected by the U. S. Constitution. Behaviors are not covered under First Amendment rights. If they were, alcoholics or drug addicts or compulsive shoppers, for example could claim special right privileges. Rather, there are only laws prohibiting behavior associated with homosexuality such as sodomy.

Historically, the courts and civil rights authorities have always used a three-prong test in awarding special class protected status to a disadvantaged group.

Criterion 1: A history of discrimination evidenced by lack of ability to obtain economic mean income, adequate education, of cultural opportunity.

Homosexuals have an average annual household income of \$55,430, versus \$32,144 for the general population and \$12,166 for disadvantaged African American households.

More than three times as many homosexuals as average Americans are college graduates (59.6 percent v. 18 percent) a percentage dwarfing that of truly disadvantaged African Americans and Hispanics.

More than three times as many homosexuals as average Americans hold professional or managerial positions (49 percent v. 15.9 percent) - again making homosexuals more advantaged than true minorities in the job market.

Eric Miller, editor of Research Alert, a consumer research newsletter based in New York, stated "America's gay and lesbian community is emerging as one of the nation's most educated and affluent, and Madison Avenue is beginning to explore the potential for a market that may be worth hundreds of billions of dollars." Hardly an analysis of a disadvantaged group.

Even Robert Bray, spokesman for the National Gay and Lesbian Task Force, concurs when he stated, "Gay greenbacks are very powerful and the gay and lesbian community is a virtual mother lode of untapped sales."

Criterion 2: Specially protected classed should exhibit obvious, immutable, or distinguishing characteristics, like race, color, gender, or national origin, that define them as a discrete group.

There is still no credible scientific evidence to support genetic determination. Simon LeVay,, a professed homosexual, whose brain node study linked genetics and homosexuality, were invalidated by the scientific community. Even Masters and Johnson, renowned sexologist, reported a 79.1% success rate for their clients who discontinued their homosexual practices. Immutable characteristics cannot be reversed.

Criterion 3: "Protected classes" should clearly demonstrate political powerlessness.

The National Gay and Lesbian Lobby is one of the most powerful lobby groups in the nation. They alone contributed millions of dollars into Pres. Bill Clinton's election campaign.

They have also secured political offices in the U.S. Congress, state legislatures, and on major city councils.

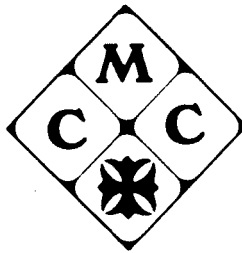
They have also been successful in pressuring the medical community to discard well-established public health policy in the treatment of HIV/AIDS, history's first "political correct" epidemic.

Before we entertain special rights status solely on the basis of sexual orientation, we must weigh the health and safety considerations and consequences of such legislation. We must also consider the entitlement we may be establishing in regards to job and educational opportunities, housing, and financial considerations. Under legislation granting special minority status to homosexuals, we can expect a deluge of nuisance suits and test cases to not only clog our legal system, but to bleed the taxpayers and defendants financially dry. Churches, other religious organizations such as our, individual employers or groups like the Boy Scouts would be defenseless in hiring criteria.

Montana's citizens sent a very clear message to the governor and the legislature last session on their opposition to homosexual or "sexual orientation" rights. With all these considerations, I strongly recommend a "do not pass" on HB388. Thank you

Respectfully submitted:

Laurie Koutnik, Executive Director of Christian Coalition of Montana  
2-10-94



# Montana Catholic Conference

EXHIBIT 94  
DATE 2/10/95  
HB 388

**FEBRUARY 10, 1995**

**HB388 - INCLUDING SEXUAL ORIENTATION IN SOME OF THE PROTECTIONS CONTAINED IN THE HUMAN RIGHTS LAWS**

**MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM SHARON HOFF, REPRESENTING THE MONTANA CATHOLIC CONFERENCE. IN THIS CAPACITY, I ACT AS LIAISON FOR MONTANA'S TWO ROMAN CATHOLIC BISHOPS ON MATTERS OF PUBLIC POLICY. THE MONTANA CATHOLIC CONFERENCE OPPOSES HB388.**

**DURING THE 1993 SESSION, SIMILAR LEGISLATION WAS SUBMITTED. THE DIFFERENCE WAS THAT THE WORDS "SEXUAL ORIENTATION" WERE ADDED THROUGHOUT THE MONTANA HUMAN RIGHTS ACT. WHILE THIS LEGISLATION SUGGESTS ADDING THE WORDS "SEXUAL ORIENTATION" ONLY TO SELECTED PARTS OF THE HUMAN RIGHTS ACT, WE ARE CONCERNED ABOUT CREATING A NEW PROTECTED CLASS AND THE MANY UNANSWERED QUESTIONS ABOUT SUCH ACTION. ADDING THE WORDS "SEXUAL ORIENTATION" TO PARTS OF THE HUMAN RIGHTS ACT OPENS THE DOOR TO ADDING THIS LANGUAGE TO THE ENTIRE ACT.**

**ONE PARAGRAPH NOT CITED FOR CHANGE IS FOUND IN**

**MCA SECTION 49-2-308 WHICH READS: DISCRIMINATION BY THE STATE. (2) IT IS AN UNLAWFUL DISCRIMINATORY PRACTICE FOR THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS: (A) TO**

**REFUSE, WITHHOLD FROM, OR DENY TO A PERSON ANY LOCAL, STATE, OR FEDERAL FUNDS, SERVICES, GOODS, FACILITIES, ADVANTAGES OR PRIVILEGES BECAUSE OF RACE, CREED, RELIGION, SEX, MARITAL STATUS, COLOR, AGE, PHYSICAL OR MENTAL HANDICAP, OR NATIONAL ORIGIN UNLESS BASED ON REASONABLE GROUNDS;...**

**WHILE I DO NOT HAVE AN OFFICIAL LEGAL OPINION, SEVERAL OF MY CATHOLIC CONFERENCE COUNTERPARTS IN OTHER STATES AGREE THAT THIS SECTION COULD OPEN THE DOOR TO SAME-SEX MARRIAGE, WHICH IS NOT SOMETHING THE ROMAN CATHOLIC CHURCH CAN SUPPORT.**

**THE HAWAII SUPREME COURT HAS RULED THAT IT IS UNCONSTITUTIONAL TO DENY PERSONS THE RIGHT TO MARRY BASED ON SEXUAL ORIENTATION UNDER THE EQUAL PROTECTION CLAUSE OF THE HAWAIIAN CONSTITUTION. THE COURT DID NOT, HOWEVER, GRANT HOMOSEXUAL COUPLES THE RIGHT TO MARRY, BUT HAVE RETURNED THE ISSUE TO THE HAWAII STATE LEGISLATURE, MANDATING THAT THE LEGISLATURE SUBMIT A COMPELLING REASON WHY HOMOSEXUAL COUPLES SHOULD NOT BE MARRIED. THE HAWAII LEGISLATURE IS NOW LOCKED IN DEBATE TRYING TO DEFINE MARRIAGE.**

**CIVIL AUTHORITIES HAVE A CIVIC AND MORAL RESPONSIBILITY TO FOSTER AND DEFEND MARRIAGE AND THE FAMILY, BOTH AS A GOOD IN ITSELF AND AS THE ULTIMATE GUARANTOR OF THE GOOD OF SOCIETY. THE PROPER WAY TO PROTECT AGAINST UNJUST**

**DISCRIMINATION IS BY ENFORCEMENT OF CURRENT LAWS AND  
EDUCATION OF ITS CITIZENRY.**

**THE HUMAN RIGHTS ACT AS IT IS CURRENTLY WRITTEN SHOULD  
PROTECT ALL PEOPLE, INCLUDING THOSE OF HOMOSEXUAL  
ORIENTATION. SO LONG AS CURRENT LAWS ARE ENFORCED, THEN  
THE HUMAN AND CIVIL RIGHTS OF EVERYONE, INCLUDING  
HOMOSEXUAL PERSONS, ARE ADEQUATELY PROTECTED.**

**OUR CHURCH HAS TAUGHT AND WILL CONTINUE TO TEACH OUR  
FAITHFUL THAT ALL PERSONS ARE SACRED, EQUAL IN DIGNITY  
BECAUSE ALL ARE CREATED IN THE IMAGE OF GOD. AS CITIZENS WE  
WILL MAKE EVERY EFFORT TO SEE THAT UNJUST DISCRIMINATION BE  
ELIMINATED IN OUR SOCIETY.**

**HOUSE BILL 388 IS NOT THE PROPER WAY TO ADDRESS THE  
PROBLEM OF UNJUST ACTS OF DISCRIMINATION IN OUR COMMUNITY  
TODAY OR IN THE FUTURE. PLEASE ASSIGN DO NOT PASS HB388.  
THANK YOU.**

February 10, 1995

EXHIBIT 45  
DATE 2/10/95  
HB 388

Arlette Randash / Eagle Forum  
HB 388

I rise in opposition to HB 388 because it would give no more protections to homosexuals than they currently enjoy. It would only serve to legitimize homosexual behavior.

Civil rights protections to supposedly end homosexual job discrimination is unnecessary because homosexuals are not be discriminated against in employment. Women, blacks or ethnic minorities who earn less than white males asserted the need for civil rights laws to balance the condition they were born int, however, homosexuals have done very well economically. The average household income for male homosexual "couples" is \$56,863, while married heterosexual couples average \$10,000 less. Homosexuals also are more likely to have a college degree and a professional and managerial career, (60% have college degrees vs. 20% for heterosexuals).

However, if HB 388 were to pass, for the first time in Montana history employers would be told that they must not consider the behavior of a potential employee in hiring considerations, *precisely because they believe their behavior immoral*. The Montana state legislature would have to tell orthodox Jews, Christians, and Muslims, and members of other faiths that they can no longer allow their religious beliefs to influence their private business transactions. Moreover, Christian bookstores, Boy Scout summer camps, religious broadcasters.... none could consider the sexual orientation of a potential employee when making hiring decisions. HB 388 would open the door for government enforcers to begin affirmative action to enforce quotas in hiring.

It would further burden employers because there is abundant evidence from major medical journals that homosexual behavior is extremely unhealthy, contributing to the spread of AIDS, hepatitis A, B., and C, and other sexually transmitted diseases. It would be unfair to force businesses, especially the small employers of Montana, to pay the extra insurance expense and lost productivity that inevitably results from homosexual behavior.

HB 388 passage would be the first step in a series of steps advancing the homosexual agenda:

- 1) Recognition of same-sex "marriage" and "domestic partnerships"
- 2) Adoption of children by homosexual couples
- 3) Repeal of all sodomy laws
- 4) Repeal of "age-of-consent" laws for sexual relations
- 5) Encourage the teaching of homosexuality as an alternative lifestyle in public schools.

Societies all over the world for thousands of years have employed legal and cultural means of discouraging sex outside the marital relationship precisely because the implications of sex outside marriage do affect everybody in terms of unwed pregnancies, AIDS and other venereal diseases that are a threat to the public health and generate public expenses. Homosexuals enjoy full legal protection now. It would be bad public policy and bad law to permit homosexuals civil rights protections based solely on behavior.

. Defeat HB388 fallacious attempt to legitimize the homosexual agenda. Vote 'No.'



Mrs. Chairman, Committee Members,

My name is Sylvia Erickson and I am Ben's mother. I am also a preschool teacher at Atonement Lutheran Church in Missoula where we have lived since Ben was born in 1975.

I am here today to speak on behalf of Ben and all gay and lesbian Montanans, but I also feel as a parent I speak for hundreds of other parents who are afraid to come to speak to you on behalf of their gay and lesbian children — afraid because of what it would mean for the safety and security of their family members. These people are absent not because they don't want to be here, but because they are afraid. That is a sad commentary on our society this is.

I also speak to you as an advocate and voice for the young children I have taught during the past 13 years. Some of those approximately 600 children will realize as they grow older that they are gay or lesbian. In my classes we learn some very basic truths that are profoundly important — that we as children and adults ought to treat each other fairly. We often ask "Is this fair and right?" Another simple rule is that we do not judge each other. As one of my little students said "If we were all the same, we wouldn't know who we ~~were~~ <sup>are</sup>." How simply put, but how true!"

So, let us ask our selves "Who are we?" Are we people who cherish our constitutional

rights?"

Of course we are.

But, more specifically, can we, you and I, ensure that our gay and lesbian children and grandchildren will be protected by the law in Montana? And in being protected, live free of fear, unafraid of discrimination and reprisal - free to devote all their energy into being productive people?

Yes, we can and, in all our best interests, we must. I urge you to see your own family member's faces when you consider this bill.

**Richard Erickson, 4108 Barbara Lane - Missoula**

born and lived 50 years as a Montana resident

direct the bands at Sentinel High School

graduate of St. Olaf College - Lutheran College in Northfield, MN

director of church choir at Atonement Lutheran Church-Missoula

member of Church Council at Atonement Lutheran Church

I have three sons:

Peter was married last summer and is a first year student at  
Luther Seminary in St. Paul, MN

Andy is a senior at St. Olaf College and is currently student  
teaching and will become a teacher after graduation

Ben is a freshman at MSU and majoring in Film-making

I have been largely unaware of the problems faced by the gay and lesbian community for 49 years, but during my 50th year and thanks to my third son have become very aware of how many difficulties these folks can face. They are also my colleagues and friends as I am sure that they are yours, and they are fine, contributing members of our society who work, create, participate and just want to have the same rights to live as we enjoy living.

This is a wonderful opportunity for the State of Montana. We don't have a perfect record by any means, but we have done some good things with minority groups. We have the proud claim to being the first state to elect a woman to the U. S. Congress, Jeannette Rankin. At this time we are one of the leaders of the 50 states in offering equal opportunities for girls in extra-curricular activities in our public schools. Now we have the opportunity to again help end discrimination against this group of Montanans who love our state and wish to live with equal opportunity in the workplace and their lives.

Some of the testimony opposing this bill today will probably be very similar to that used in the last 150 years in this country, often from church pulpits, to continue the practice of slavery, prevent women from voting, and keeping blacks, native Americans, and women from enjoying equal opportunity. It is judgmental in nature and discriminates against entire groups of strangers based on prejudice. The greatest perversion of all is to somehow use the Christian religion and the teachings of Jesus Christ to promote hatred and bigotry.

I sincerely hope that you will vote for this bill for the sake of all Montanans.

MR. CHAIRMAN, COMMITTEE MEMBERS,  
HELLO. MY NAME IS BEN ERICKSON. I  
AM A FRESHMAN AT MONTANA STATE UNIVERSITY,  
AND I AM GAY. THAT'S NOT ALWAYS BEEN VERY  
EASY FOR ME TO SAY. I WAS HORRIFIED WHEN  
I REALIZED THAT HOMOSEXUALITY WAS THE LABEL  
FOR THE FEELINGS THAT I WAS HAVING SEVERAL YEARS  
AGO; AND SO I TRIED SO HARD TO CHANGE MYSELF.  
I PRAYED EVERY NIGHT FOR MANY MONTHS FOR GOD  
TO CHANGE ME + FORGIVE ME + TO MAKE ME HAVE  
NORMAL FEELINGS. AFTER SEVERAL MONTHS I WAS NO  
DIFFERENT. WHY DIDN'T GOD CHANGE ME? I CAN'T ANSWER  
THAT - MY PARENTS CAN'T ANSWER THAT, NOR CAN MY FELLOW  
CHRISTIANS. MY SEXUAL ORIENTATION WAS NOT A CHOICE NOR IS  
ANY OTHER GAY PERSON'S. ANYONE WHO WOULD CHOOSE TO BE  
HATED, OSTRACIZED, + DECLARED SINNERS BY OUR SOCIETY WOULD  
HAVE TO BE A VERY STUPID PERSON, + I AM NOT A STUPID PERSON.  
I AM A MEMBER OF THE MSU HONOR ROLL. ON BEHALF OF  
GAY PERSONS, I DO NOT ASK FOR SPECIAL TREATMENT. I'VE ALREADY  
RELIEVED MY SHARE OF SPECIAL + EXTRAORDINARY TREATMENT.  
I HAVE THE SPECIAL TREATMENT OF NOT BEING ALLOWED TO SERVE  
MY COUNTRY IN THE MILITARY, I HAVE THE SPECIAL TREATMENT  
OF NOT BEING ALLOWED TO MARRY LIKE MY BROTHER DID THIS  
PAST SUMMER. I HAVE THE SPECIAL TREATMENT OF HATEFUL  
WORDS LIKE FAGGOT + QUEER. I KNOW HOW MUCH THOSE WORDS  
HURT. + ITS NO WONDER THAT THE MINNESOTA STATE UNIVERSITY  
DID A STUDY + FOUND THAT 1/3 OF ALL TEENAGE SUICIDES ARE  
GAY + LESBIAN TEENS. SO YOU SEE, BY BIRTH, I ALREADY  
RELIEVE MY SHARE OF "SPECIAL TREATMENT." I ASK ONLY  
FOR JUSTICE - ANYTHING LESS - GIVES THE UNINFORMED  
MEMBERS OF OUR SOCIETY A LICENSE TO HATE + THAT'S  
NOT FAIR. I DON'T HAVE THE OPPORTUNITY TO BE STRAIT, AND  
FREE OF DISCRIMINATION, BUT YOU HAVE THE OPPORTUNITY  
AND THE DUTY TO MAKE JUSTICE HAPPEN.

ANSWERS TO CONCERNS WITH HOUSE BILL 388

Testimony presented by the University of Montana Law School Chapter of the A.C.L.U.

1. "Gay men and lesbians are already covered under the Constitution just like the rest of us. What they want is SPECIAL RIGHTS. We oppose SPECIAL RIGHTS for gay people."

"Special Rights" rhetoric skews the issue. The right to get and keep a job based on merit is not a special right. The right to have housing is not special right. The right to be served food in a restaurant or stay in a hotel are not special rights. The right to have and raise children without the state seizing them is not a special right. The right to walk down the street and not be attacked because of who you are and whom you love is not a special right. Gay and lesbian people are entitled to the same rights guaranteed to all American and Montanan citizens. However, without civil rights laws, such as House Bill 388, which specifically ban discrimination based on sexual orientation, gay people can lose their jobs, their homes, and their families and be refused service at public accommodations simply because they are gay-- with no legal recourse. Those who speak of special rights want the very special right to discriminate against people they disagree with.

2. "Civil rights for gay men and lesbians will mean hiring quotas."

This legislation simply prevents employment discrimination based on sexual orientation. It in no way requires employers to hire a certain number of gay or lesbian employees.

3. "Civil rights for gay men and lesbians force the rest of us to live against our religious beliefs. We're entitled to our rights too."

Most civil rights ordinances provide exemptions for religious institutions. And extending civil rights to one sector of society does not withdraw rights from another. In addition, many gay and lesbian members of various religious denominations are organizing within their faith so that religious institutions may become more accepting of the diversity of their following.

4. "They want to be treated like a minority, like an ethnic minority. The Supreme Court says they're not. And we know they're not because they never rode in the back of the bus and they are not economically deprived."

Like other minorities, lesbians and gay men face job loss, eviction, non-service at public accommodations, and the loss of their children simply because of who they are. Like other minorities, gay people face harassment, physical assault, and murder based on an assailant's hatred against them as a group. According to a national study, anti-gay violence and victimization rose 31 percent in 1991, and a Department of Justice study reported that homosexuals are probably the most frequent victims of hate crimes. Our constitution says all citizens are created equal -- that must include lesbian and gay

citizens.

5. "Homosexuals lead an abominable lifestyle. People who care about traditional family values must not encourage the open expression of this sexual depravity."

Discrimination is the abomination, not gay and lesbian people. The family values we uphold are tolerance, love, understanding and respect between family members. Discrimination and bigotry are not traditional family values.

6. "Gay people want to force their lifestyle on us and take away our rights."

Civil rights laws that include gay and lesbians people do not limit the rights of others. Instead, they extend to gay and lesbian people the same rights already enjoyed by most Americans and Montanans -- the right to acquire housing; the right to raise their children; and the right to live free of violence. Gay people are not interested in forcing anything on anyone -- just the opposite. Most gay people would prefer to live in privacy, without intrusion.

7. "The inclusion of sexual preference in anti-discrimination laws will lead to gay marriages and the destruction of the American family."

Anti-discrimination laws that include gay and lesbian people do not grant the right to marry. While society perpetuates the stereotype of all gay people as sexually promiscuous, it denies them recognition of their committed unions. Lesbians and gay men are working toward legal recognition of their loving relationships, as well as acquiring employment benefits for their mates which are equivalent to their heterosexual co-workers.



## Montana Citizens for Decency through Law, Inc.

P.O. Box 4071 • Missoula, Montana 59806 • (406) 777-5862 • Fax: (406) 777-5025

February 10, 1995

Chairman Bob Clark  
House Judiciary Committee

Re: HB388

Chairman Clark and Members of the Committee,

I am submitting written testimony concerning the effort to include "sexual orientation" in the human rights laws of Montana.

The term "sexual orientation" is so broad as to include pedophiles, and other sexual deviates to numerous and explicit to mention.

Our organization takes this stand in recognition of the fact that there are those who desire to legalize the sexual use of children by adults. The Renee Goyen Society, whose motto is "sex before eight or it's too late" and NAMBLA North American Man Boy Love Association desire to be protected by civil rights laws also, and would be under the proposed wording.

If the term were to be defined as meaning homosexuals we would still be opposed because it creates a whole new category in the civil rights law and sets a precedent for the deviates mentioned above.

Thank your for considering this issue and the negative effects HB388 would have on our society.

Sincerely,

Dallas D. Erickson  
President

## JUDICIARY

COMMITTEE

DATE 2-10-95

BILL NO. HB 378 SPONSOR(S) Rep. Jore

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CS-14



HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2-10-95

BILL NO. HB 382 SPONSOR(S) Rep. Pavlovich

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bill Verwool &	City of Helena	✓	
Bill Gramerhus	RMTD - Data	✓	
Ray Barnicoat	Montana Association of Cos	✓	
Bob Worthington	MIDIA	✓	
David Hull	Helena City Attorney	✓	
Tim Beardon	Dept Transportation	✓	
John Wall	Smith-McCowan	✓	
<del>Eric Erickson</del>	<del>PRIDE</del>	✓	
Joyce M. Halster	P-FLAG	✓	
Lobby Targator	myself	✓	

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HR:1993

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CS-14

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2.10.95

BILL NO. HB 444 SPONSOR(S) Speaker Mercer

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Renee Mahr 3716 Wylie Helena	MACEM	X	
Robert Mahr 3716 Wylie Helena	MACEM	X	
Sharon Bakerson	MACEM	X	
David Hull Helena	SOLE	X	
Vivian Marie	MLSA	X	
Laure Kostuk	Christian Coalitions Mt	X	
<del>William Mager</del>	<del>Adm</del>		
C Mary Alice Cook	Adm for MTS Children	X	

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HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE

BILL NO. 388

SPONSOR(S)

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Dina SANDS	Self	X	
Both Wheatley	Self	X	
Auraine Phillips	Self	X	
Ann Brodsky	Self	X	
VICKIE AMUNDSON	MONT WOMENS LOBBY	X	
Julia Weddle	U.M. LAW SCHOOL A.C.L.U.	X	
Shelly Meyer	AAUW	X	
Holly Franz	Self	X	
Linda Gryczan	Montana Womens Lobby	X	
Tom Malster	P.F. / Ag.	X	
BEN ERICKSON	SELF	X	
Jim Masters	Self	X	
Ardyce Masters	"	X	

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HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2.10.95

BILL NO. HB 388 SPONSOR(S) Rep. Ream

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
Laure Koehn	Christian Coalition of MT		✓
Shirley Johnson	AAUW	✓	
Judy Sanderson	AAUW	✓	
KARRELL HOLZER	AFL-CIO	✓	
David Orendorff	United Methodist Church	✓	
Christine Kaufmann	Montana Human Rights	✓	
Maureen Sharghnessy	not testifying	✓	
Sandra Hale	PRIDE!, Helena, MT	✓	
Cocky Smith	PFLAG - /self	✓	
Barbara Larsen <sup>2550 Vandenberg</sup> Arlee MT	Self	✓	
ERIK HENDERSON <sup>RT. 1, South</sup> <sup>Box 239A</sup> CASCADE MT.	SELF, PRIDE, HILARIOUS	✓	
RICHARD ERICKSON <sup>4148 BARBARA</sup> Missoula	my family	✓	
Connie Leiger	Self	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE

BILL NO. 308

SPONSOR(S) Rean

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
SHARON HOFF	MT CATH CONF		X
Sandra Bagg	self	✓	
Chris Belville	Self	✓	
Kate M <sup>9</sup> PO Box 6750 Bzn	Self	✓	
Dara Lynne	Self	✓	
Sharon Donovan	Self	✓	
Anne MacIntyre	Human Rights Commission	information	
Suzanne A. Grubbaugh	Self	✓	
Carol M. Narrance	Self	✓	
Sylvia Erickson	P-FLAG-SELF-SON	✓	
Grandfiddle	people	✓	
JOHN BOHLINGER	PEOPLE	X	
ARLETTE RANDASH	EAGLE FORUM		X

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