

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **SEN. BRUCE D. CRIPPEN**, on February 14, 1997,
at 8:00 a.m. in the Senate Judiciary Chambers (Room 25) of
the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 263, posted February 5
SB 291, posted February 8
SB 321, posted February 11
SB 329, posted February 12
SB 327, posted February 11
Executive Action: SB 263, SB 329

EXECUTIVE ACTION ON SB 230

Amendments: sb023005.av1, sb023006.av1 (EXHIBITS #a AND #b)

Motion/Vote: SEN. SHARON ESTRADA MOVED SB 230 BE TAKEN OFF THE
TABLE. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT
SEN.S HALLIGAN, BISHOP, JABS, AND DOHERTY WHO VOTED NO.

Motion: SEN. ESTRADA MOVED THE AMENDMENTS sb23005.av1 BE
ADOPTED.

Discussion: The amendment creates a new bill, and will amend only 45-5-105, MCA. It provides that a person commits the crime of suicide whether or not they are successful.

SEN. SUE BARTLETT addressed amendments sb023006.avl. The amendment strikes subsection (2)(A), and ends subsection (3) after "does not violate this section". Those two sections bothered me the most regarding appropriate treatment of a terminally ill person which could be inhibited unless this language is stricken.

SEN. RIC HOLDEN. What do you think of **SEN. BARTLETT's** amendment?
Susan Good. We prefer sb23005.avl, but we will accept sb23006.avl.

CHAIRMAN BRUCE CRIPPEN. Amendment sb23006.avl is much narrower. We don't want to put hospice people in a bad situation, as they administer greater doses of medication to the terminal ill than are regularly given to sick people. Does the amendment cover this? **Ruth Sasser.** If we're going to have such a bill, this is more of a compromise for palliative care and hospice.

Motion: **SEN. STEVE DOHERTY MADE A SUBSTITUTE MOTION TO ADOPT sb023006.avl. THE MOTION CARRIED UNANIMOUSLY.**

SEN. STEVE DOHERTY. If the intent of the Committee is to resolve this issue, I believe this bill will come back to us changed. But, if we've made a statement with the adoption of this amendment, I hope the Conference Committee will be carefully selected and that we stick to our guns. **CHAIRMAN CRIPPEN.** That is a good point to make that the majority of the Committee honor its commitment to the bill as it is now. If it is changed too much, I would balk.

Motion: **SEN. BARTLETT MOVED TO TABLE SB 230 AS AMENDED.** I can't get passed seeing this bill, in any form, as a Pandora's box that I'm not willing to open. I have a persistent fear of what this bill might become or do to influence the medical community concerning the terminally ill. I know these decisions are difficult for the family, as well, and am unwilling to make this situation even more difficult for them.

SEN. REINY JABS. Is Section 3 on page 2 eliminated now?
CHAIRMAN CRIPPEN. Yes.

Vote: **SEN. BARTLETT'S MOTION TO TABLE SB 230 CARRIED IN A ROLL CALL VOTE (6-4).**

SEN. HOLDEN ASSUMED THE CHAIR AT THIS POINT IN THE MEETING.

HEARING ON SB 263

Sponsor: SEN. AL BISHOP, SD 9, Billings

Proponents: Kristen Juras
Sherry Meador, Superior Court Child Neglect
Program
Bob Pyfer, Montana Credit Unions League
David Dennis, D.A. Davidson Companies
John Cadby, Montana Bankers Association

Opponents: None

Opening Statement by Sponsor: SEN. BISHOP, SD 9, Billings. This is principally a technical correction bill.

Proponents' Testimony: Kristen Juras with Church, Harris, Johnson, Great Falls, for the Committee on Trust, Tax, and Real Estate Law (EXHIBIT #c). Sections 1 and 6 make a correction to the Montana Unit Ownership Act passed with an error a few years ago. The language has been modified to say "declaration must be proved unless not...". Section 6 also contains equitable apportionment with regard to paying ones fair share of inheritance tax, but the testator of a will can state this is to be paid under residual estate of the will, and adds the language, "also by living trust."

Sherry Meador, Superior Court Child Neglect Program. This gives the Court authority to limit powers of administrator and guardian.

Bob Pyfer, Montana Credit Unions League. In 72-6-204, MCA, on page 3, line 3, "type" is changed to "terms" to correct it under current 6-12-13 (Uniform Multiple Party Law). Language is added on lines 6-7, "unless otherwise agree...no changes can be made." On line 13, Subsection (3)(a), language was added that parties can't change the agreement with the financial institution without their permission. In Subsection (b), line 14, a financed institution can have a policy not to make changes unless all parties agree. This guarantees financial institutions the same protection in making changes as in making payments. Sections 3, 4, and 5 merely remove ambiguities.

David Dennis, D.A. Davidson Companies, including D.A. Davidson, Inc. and five trust companies in Montana, Idaho, Washington, and Alaska. D.A. Davidson can provide services to the Trust Corporation it manages, but current law is unclear.

{Tape: 1; Side: A; Approx. Time Count: #29.8; Comments: 8:35 a.m..}

For example, D.A. Davidson purchases securities for the Trust. As another example, the law is unclear in situations where we

would buy a tax-free bond for the Trust. D.A. Davidson is performing a service, and this would allow D.A. Davidson to sell a bond to the Trust.

John Cadby, Montana Bankers Association. The Association supports the bill.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON SB 329

Sponsor: SEN. MIKE HALLIGAN, SD 329, Missoula

Proponents: Elaine H. Gagliardi, Business, Trust, Tax Estate
and Real Property Section of the Montana
State Bar
Kristen Juras

Opponents: None

Opening Statement by Sponsor: SEN. MIKE HALLIGAN, SD 329, Missoula. This is the Committee bill to deal with pressing issues on limited partnerships and limited liability companies brought by the Montana State Bar. I will reserve the right to close.

Proponents' Testimony: Elaine Hightower-Gagliardi, Business, Trust, Tax Estate and Real Property Section of the Montana State Bar, and visiting professor at the University of Montana School of Law. Sally Deaver and I worked on this to make it easier for owners of businesses in Montana to do business in the State.

Section 1 is a new section on the Model Business Act, recently adopted by the American Bar Association, and allows shareholders to enter into more flexible agreements and to operate more informally and still have limited liability - more flexible without the statutory closed corporation status.

{Tape: 1; Side: A; Approx. Time Count: #37.7; Comments: None.}

Section 3 makes a technical correction to the Professional Limited Liability Company Act. Right now they are only protected against malpractice of an employee, so "member" was inserted to broaden the language.

Section 4 simplifies information to go into the certificate of limited partnership. Apparently, after 1985, when the Uniform Act was drafted, Montana never picked this up, although 43 states have done so. This was brought to our attention by Dean Eck at the University of Montana School of Law.

Sections 8 and 24 contain the two deviations from the Uniform Act, so that closely held businesses can actively plan to avoid payment of federal estate and gift tax liability. It now reads that a limited partner can withdraw on six months notice and the remaining partners must buy that limited partner out.

If this is changed, as proposed in the bill, a limited partner would not be able to withdraw unless this was drafted in the agreement.

In 1990 Congress amended the Federal Estate and Gift Tax Code, so it could only be amended this way.

{Tape: 1; Side: B; Approx. Time Count: 00; Comments: 8:47 a.m..}

A tax savings sample is shown on page 2 of **EXHIBIT # 1**. If this is left as it is now, valuation would remain at about a 35 percent discount.

Kristen Juras. I strongly support these changes, as they greatly enhance our flexibility in helping these people.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: None

HEARING ON SB 321

Sponsor: SEN. MIKE HALLIGAN, SD 34, Missoula

Opponents: Margaret Morgan, Director, Montana Association of Realtors (MAR)
Janet Robideau, Montana People's Action

Proponents: Sharon Ruiz, Montana People's Action
Bill DeCou, Montana People's Action
Therese Hetzel, Montana People's Action
Ronda Carpenter, Montana Housing Providers
Daniel McLean, Montana State Bar
Vern Fischer, Great Falls mobile home park owner
Jim Whitaker, Great Falls, IPM

Opening Statement by Sponsor: SEN. MIKE HALLIGAN, SD 34, Missoula. We are attempting to create a mobile home and manufactured housing ombudsman patterned after Oregon's program. Section 9 of the bill provides for a \$1 fee on each space in each mobile/manufactured home community. We made no attempt to expect the owner of a mobile home park to pay for this legislation.

The ombudsman would mediate disputes statewide, to bring common sense to the many rules governing mobile home parks in communities in Montana. This is an attempt to bring about some

conformity in implementing rules which do work, instead of using the Legislature to mediate these disputes.

I believe more and more people will be living in mobile home parks. Oregon uses a \$3 fee, and the proponents of this bill want to amend it to this amount, although we don't have a fiscal note yet.

I know Greg Van Horssen had some concerns with this bill, but I don't know if he is here to testify.

Proponents' Testimony: Janet Robideau, Montana People's Action. We support \$3 per space per year. As tenants we are willing to pay this, and we want a mediator. This would alleviate some landlord/tenant cases now clogging the courts. We have patterned this legislation after the nursing home ombudsman. Montana People's Action cannot take individual cases and we are not attorneys.

Sharon Ruiz, Montana People's Action, Bozeman (EXHIBIT #2). The program in Oregon started in 1991 and 425 parties have used its services that year. In 1995 the program was used by 3,217 parties. We want to make it easier for people to know and to use their rights, as some have felt harassed and intimidated by landlords.

Bill DeCou, a landlord with 12 units in Missoula. I don't see any reason why a landlord would oppose this as it would save time, money, and hassles for everyone. I know three-fourths of cases going into mediation are settled without going to court, from experience when I worked for Workers' Compensation.

Therese Hetzel, Montana People's Action, Missoula (EXHIBIT #3). Missoula. The District court in Missoula estimates that 40 percent of their cases are landlord/tenant cases. We urge the Committee's support of this bill.

Opponents' Testimony: Margaret Morgan, Director, Montana Association of Realtors (MAR). We believe this is unnecessary legislation, and adds to the Montana Human Rights Commission whose budget and staff could be cut this session. There are other means of accomplishing this without more government bureaucracy. We ask the Committee to vote no on this legislation.

Greg Van Horssen, Montana Housing Providers. We oppose this legislation as it creates a new level of government. Subsection (2) would apply to any manufactured housing community with two or more spaces, and subsection 2 (4) provides a statutory mandate to cooperate. In Section 5 it appears a mediator would be second-guessing a business decision, yet the mediator "must" negotiate.

Ronda Carpenter, Montana Housing Providers. We don't agree with the numbers stated for mobile home park spaces, as the State

Department of Health says spaces are down by 1600 in the past 5 years. More than 600 parks have less than 8 spaces.

Great Falls and Billings are responsible for having a fair housing organization, and there are more than 11 landlord associations - the Montana People's Action, the Concerned Citizens Coalition, and the Montana Board of Realty Regulation - so there are plenty of places to go for help.

Also, we believe printing costs would be exorbitant.

Daniel McLean, Montana State Bar, representing Gary Oakland, a mobile home park owner in Bozeman. I question whether basic policy statements are accurately reflected for this legislation. There have been three complaints against my client since last legislative session, and they have not been that big of a deal. The industry is already highly regulated, so I would urge you to table this bill.

Vern Fischer, Great Falls mobile home park owner, IPM and (Montana Landlord's Association) MLA member. I believe the problems are more between the tenants themselves.

Jim Whitaker, Great Falls, Vice President, Income Property Owners and Managers (IPM). We are asking that the Committee to table this bill.

Questions From Committee Members and Responses: **SEN. WALTER MCNUTT.** What is the difference between manufactured homes, modular homes, or trailers? **SEN. HALLIGAN.** That is a good question. We greed to take "manufactured housing" out of the bill, and to called them "mobile homes" and "mobile home courts".

SEN. JABS. What can we do to satisfy the discontent of these people? **Greg Van Horssen.** I believe these folks need to come to the table and resolve their issues outside of court.

VICE CHAIRMAN LORENTS GROSFIELD. I'm not sure I heard right. Was it that the issues revolve around the courts? **Greg Van Horssen.** I was speaking to the rules and procedures to be developed by each community.

{Tape: 1; Side: B; Approx. Time Count: #36.2; Comments: 9:26 a.m..}

VICE CHAIRMAN GROSFIELD. I believe we have come a long way, but we're not there yet. It seems that a significant part of the problem is with the many rules. It makes me nervous to dictate rules to private business, but I do see the inconsistencies in the set of mobile home park rules I have in my office. Do you have thoughts outside or via this bill to resolve this problem with rules? **SEN. HALLIGAN.** Most of us don't have a concept of the close quarters in mobile home parks. This type of legislation worked well with the nursing home problem, and I'd be happy to

work in fine-tuning mediator responsibilities. I've seen the rules, and don't know how people avoid breaking them.

VICE CHAIRMAN GROSFIELD. Will the \$1 fee be insufficient? **SEN. HALLIGAN.** I have an amendment to increase the fee to \$3 per space per year. We want the fee to be commensurate with the cost of the program.

SEN. BARTLETT. How many park owners are members of the Montana Manufactured Housing Providers? **Greg Van Horssen.** I don't know. **Ronda Carpenter.** There are 900 members, but mobile home park owners are not listed separately from apartment owners.

{Tape: 2; Side: A; Approx. Time Count: 00; Comments: 9:30 a.m..}

SEN. BARTLETT. How do we deal with owners who aren't a part of an association? Would we do this outside of court? Outside of the Legislature? **Greg Van Horssen.** I'm not sure. I know there are options and remedy available in the court process. There are prohibitions in statute to prevent promulgation of unreasonable rules. We need to enforce statutes in existence now.

SEN. JABS. When one buys a condo, one knows the rules up front. Would one mediator cover the entire State, with one set of rules?

SEN. HALLIGAN. Condominium rules seem to work. This contemplates the same kind of situation with six-seven mobile home owners working with a landlord/park owner.

VICE CHAIRMAN GROSFIELD. Will the amendments be ready today?
Valencia Lane. Yes.

SEN. HOLDEN. How would the Human Rights Commission be involved?
Margaret Morgan. In reading the language on page 3, Section 2 concerning the mediator, I see government involvement more than needs to be. The Board of Realty Regulation currently licenses property managers. I've been attending their meetings for three years and haven't ever heard these problems mentioned there.

Closing by Sponsor: **SEN. HALLIGAN.** The proposed \$3 fee would make the program self-supporting, just like the business fees paid to the Secretary of State's office. I am willing to strike Subsection (3) to allow someone with experience to mediate.

If landlords were as good as the ones we've heard from, that would be good, but some aren't and that's the reason for this bill. The courts are overloaded with these cases now. I would guess there are few nursing home cases in the courts now that we have a nursing home ombudsman.

HEARING ON SB 327

Sponsor: SEN. STEVE DOHERTY, SD 24, Great Falls

Proponents: None

Opponents: None

Opening Statement by Sponsor: SEN. STEVE DOHERTY, SD 24, Great Falls. The title explains the bill. Last election cycle, due to modern technology, phone banks were set up on election day to inundate voters from 8 a.m. to 1 p.m. with thousands of call. I don't believe this is right.

There are two types of offenses: 1) those of the caller; and 2) those of the kingpins who fund these calls. The current penalties are not enough to curb this activity on election day. I believe this is a real problem, and that we need a time-out to let people vote on election day.

Informational Testimony: Ed Argenbright, Commissioner on Political Practices. During last election day my office was inundated with complaints regarding this practice. Right now, I'm in Court concerning constitutional right of free speech over this. The law prohibits this on election day, and paid ads are specifically prohibited. This bill would clarify current statute.

Questions From Committee Members and Responses: SEN. SHARON ESTRADA. What does the statute say? Ed Argenbright. The statute prohibits solicitation of votes and placement of ads.

SEN. ESTRADA. What about calling people to remind them to vote? Ed Argenbright. That is no problem.

SEN. ESTRADA. Are you trying to make this tougher? SEN. DOHERTY. Yes. The penalty now was not sufficient to make someone stop last election. I want it to be when the Commissioner on Political Practices says 'knock it off', they do. My aunt received a call at 7:30 a.m. telling her to vote against Bill Yellowtail and Max Baucus.

SEN. ESTRADA. I understand and agree, but a family member did say 'vote for Sharon', and I cringed. How do we handle volunteers? SEN. DOHERTY. That is different than a full-fledged phone bank. I believe we need to do this.

SEN. WALTER MCNUTT. These calls came from out of state? SEN. DOHERTY. Yes. Mr. Argenbright made calls to them, but that was only a slap on the wrist to them.

SEN. MCNUTT. How does the Committee on Political Practice enforce that, if the callers are from out-of-state? SEN. DOHERTY. The legal term called 'minimum contacts' allows a

Montana official to go outside the state, and bring them in to face up.

SEN. HALLIGAN. Did you research rights? **SEN. DOHERTY.** There is a lawsuit now against our not wanting electioneering on election day, so this bill doesn't affect current rights, but only makes the penalty stiffer.

SEN. HOLDEN. In Dawson County the Democrats have a good phone bank and poll-watchers. How does this bill affect that? **Ed Argenbright.** Get-out-the-vote calls would cross the line if they mentioned the name of a candidate.

Closing by Sponsor: **SEN. DOHERTY.** I believe the Committee understands the bill. The parties are supposed to get people out to vote, and I believe this bill cuts both ways. We need to assure the "quiet" on election days goes to peoples' homes as well.

HEARING ON SB 291

Sponsor: **SEN. VIVIAN BROOKE, SD 33, Missoula.**

Proponents: Christine Kaufmann, Montana Human Rights
Tammy Schnitzer, Billings
Ryan Davis
Sandra Hale, Pride, Helena
Trevor Slocum, Lambda Alliance, Missoula
Corky Smith, P-FLAG, Western Montana
Nikki Baines, Helena
Linda Gryczan for Alice Miller, Great Falls
Dr. Starshine, Great Falls
Carl Donovan, Black Eagle
Betty Waddell, Montana Association of Churches,
and for Sharon Hoff
Paul Richards, Society of Friends-Quakers
Kate Cholewa, Montana Women's Lobby

Opponents: Laurie Koutnik, Christian Coalition
Steve White, Bozeman
Arlette Randash, Eagle Forum

{Tape: 2; Side: A; Approx. Time Count: #38.3; Comments: None.}

Opening Statement by Sponsor: **SEN. VIVIAN BROOKE, SD 33, Missoula.** This is a simple bill, one and one-half pages in length, but very serious. I ask the Committee to listen carefully, and to set aside religious convictions and to listen to the criminal activities to be addressed. This law was passed in the 1980s to say Montana would not tolerate bigotry.

Proponents' Testimony: Christine Kaufmann, Montana Human Rights Network, comprised of 12 local groups and 1300 members in Montana. The victim of a hate crime is often randomly chosen. In

45 other states and in Montana, we have decided to treat these crimes as very serious, to discourage the spread of intolerance.

Rocks have been thrown through windows of buildings decorated with menorahs in Billings a few years ago. Teens in Helena have dressed up like the Ku Klux Klan and chanted against black people. (EXHIBITS #4 and #5).

{Tape: 2; Side: A; Approx. Time Count: #41.8; Comments: None.}

Hate-based violence is experience by gay men and women in Montana. Last Year a church in Great Falls was defaced which ministered to gays. Two men from Columbian Falls stabbed a gay man in Texas 43 times.

Tammy Schnitzer, Billings, dental hygienist. I am a fourth-generation Montanan, a Republican, a Lutheran, and my family is in business. I found that people in the African-American and Jewish-American communities did not respond to hate crimes. I was a voice to be heard in 1993 because I was not Hispanic, Native American, a welfare mom, or gay, but mix in and seem to be appropriate.

My issue is attractive, although it took years of struggle for my voice to be heard. The community has responded and they received the President's Award and the Moses award from New York.

I asked myself why people are uncomfortable with addressing sexual orientation in this bill.

Unidentified woman. My partner and two friends were attacked June 10, 1995 in Helena, outside the Red Meadow bar in daylight following the Pride march. We felt fear, were called names, were spit on and hit with a water jug, and told to leave town. Only one person was charged with misdemeanor assault for that situation.

{Tape: 2; Side: B; Approx. Time Count: #13.0; Comments: 10:25 am.}

Ryan Davis read from prepared testimony (EXHIBIT #6).

Sandra Hale, Pride, Helena read from prepared testimony (EXHIBIT #7) which included findings and recommendations in Montana. In December, 1995 a flyer was distributed warning certain groups to leave Montana or be hanged.

Trevor Slocum, Lambda Alliance, Missoula read the written testimony of Donald Kern who was attacked by two men and received a broken tooth, gashed lip, multiple contusions and abrasions, but didn't file a police report (EXHIBIT #8).

Corky Smith, P-FLAG (Parents and Families of Lesbians and Gays), Western Montana. I am the mother of a gay son who was sent a

seven-page letter quoting God, from 'prayer warriors'. (EXHIBIT #9).

Nikki Baines, Helena. Has a gay son and read from prepared testimony (EXHIBIT #10), and quoted Martin Luther King.

Linda Gryczan for Alice Miller, Great Falls, read from prepared testimony (Exhibit #11).

{Tape: 2; Side: B; Approx. Time Count: #24.5; Comments: None.}

Dr. Starshine, Great Falls. In Oregon two women were murdered and a man was killed in Texas last year, and a student's pickup was painted. P-FLAG does not dare list where meetings are being held, as they receive threatening calls. (EXHIBIT #12).

Carl Donovan, Black Eagle. The inside of my pickup was covered with blood because I am a spokesman for gay people. (EXHIBIT #13).

Betty Waddell, Montana Association of Churches, and for Sharon Hoff, Montana Catholic Conference read from prepared testimony in support of this legislation.

Paul Richards, Society of Friends-Quakers and former legislator. These people who are being assaulted are some of our fellow Montanans. I began as an employee of the Legislature in 1969, and ask the Committee to open its ears on this issue. Quakers can now go from one state to another without being killed. Black people can now read without being imprisoned. Montana sent Jeanette Rankin to Congress when women were still oppressed.

This weekend Quakers will be gathering with Catholics, who were also once considered inferior. We have matured in many areas, and need to extend this to sexual orientation. I urge your concurrence.

Kate Cholewa, Montana Women's Lobby. I urge your support of this bill.

Opponents' Testimony: Laurie Koutnik, Christian Coalition and for Arlette Randash, Eagle Forum. The 40,000 Montana households we represent believe in the love of God and of all our fellow men and women. We do not condone hate. Hate is ignorance, pure and simple.

I rise in opposition to SB 291, just as I've objected to previous attempts to grant civil rights protection based on sexual orientation or to confer marriage status to homosexuals. The underlying question still remains. Why should we give special class protection to an identifiable group whose primary characteristic is based solely upon their sexual conduct or orientation, when Montana law is most specific and still classifies this behavior as a felony offense?

I submit to you that the people of Montana have spoken loud and clear on attempts to legalize this behavior. In fact, a poll conducted by Lee Newspapers of Montana, just prior to this session, shows that 57 percent want deviate sexual conduct laws prohibiting homosexual sex to remain intact, and 52 percent support a ban on same sex marriages. The people of Montana are very adamant on outlawing this behavior. Why, then, should civil or human rights laws be amended to include protection against malicious intimidation based on sexual orientation? Where is the impartial evidence that laws against assault and battery, or theft, or any crime are not being enforced, based on the sexual orientation of the victim? We should be cracking down on crime in general and protecting all citizens, instead of creating more classes of specially protected victims.

Sexual orientation is a politically charged concept that is promoted to advance the homosexual activist's agenda. To create a class based on sexual behavior in the Montana civil rights law would seriously distort the entire concept of civil rights. To give one set of crime victims a higher level of protection under the law, violates the concept of equal protection under the law. If any groups aspire to such a privilege, they must prove conclusively that they are entitled to a heightened protection that other people don't get.

Homosexual activists have not made the case that they deserve more consideration than any other victim of violence. Young black men constitute a group that are most at-risk for being murdered or assaulted. There is no heightened protection for them if their assailant is also black. Why should homosexual behavior entitle someone to more protection than generally received by these young men, who as a class, are at a far greater risk?

Entire classes of people are now excluded from heightened protection: senior citizens, who are particularly vulnerable to attack; overweight people; smokers; short people. What could be more hateful than assaulting a child, or mugging someone's grandparent. Why should penalties be higher for crimes against someone solely on the grounds that the victim engages in homosexual behavior?

All people should be protected from assault on their person or property, not just a few people. As a general rule, the crime should dictate the punishment, not the attitude of the perpetrator. Heightened protection was added to the law to discourage attacks on houses of worship and their congregations.

Does the Senate really want to go on record equating homosexual behavior with religious beliefs or racial identity? Some activities are in fact more worthy of social and legal support. A society that cannot discern between a little girl praying in a synagogue, and a man engaging in group sex in a bath house has lost its moorings. While all people are entitled to full

protection of the law, special consideration should not be awarded because the victim has sex with others of their same sex.

Gay assault is not an uncommon problem in some urban areas, particularly in or near gay bars that serve alcohol. Do these constitute hate crimes? In an attempt to gain social acceptance and special protection for their behavior, homosexual activities seek to hijack the moral capital of the civil rights movement. There are three criteria for setting in place civil rights protection: economic deprivation, political powerlessness, and immutable characteristic. They fail on all three of these grounds. Using civil rights arguments is an exploitation of good peoples' sympathy.

A 1987 article in the Homosexual magazine guide outlines a strategy that homosexuals hope to use: "In any campaign to win over the public, gays must be cast as victims in need of protection so that straights will be inclined by reflex to assume the role of protectors. Our campaign should not demand direct support for homosexual practices, but should instead take anti-discrimination themes."

Opposition to extending special protection to homosexuals is not based on ignorance nor bigotry, but upon informed judgment about homosexual behavior and the political agenda of homosexual activists. If pro-family concerns were not based on fact and logic, and were not carefully thought out, we might indeed be guilty of prejudice.

We know that homosexual behavior is unhealthy. We know that homosexuals are much more likely to contract AIDS, and a host of other sexually transmitted diseases. We know that homosexuals typically have shorter life spans and are more likely to have an alcohol abuse problem. These things are personal tragedies that are hardly the basis for granting civil rights protection.

Communities have an obligation to discourage, not encourage destructive behaviors. Compassion dictates that we do nothing less than saying no to homosexual activists. This is common sense. For those here today testifying about the crimes committed against them, there are laws in our statutes that address every one of these crimes. If the perpetrators were caught, they would be tried and held accountable under those laws today.

Steve White, Bozeman read from prepared testimony, but did not leave a copy with staff. The contention of the proponents that 45-5-221, MCA, needs to add sexual orientation is inapplicable. There must be an identifiable suspect class, which must be treated dissimilarly by the statute in question. A suspect class share a common, immutable characteristics such as race, gender, national origin. Neither homosexuality or sexual preference is considered a suspect class by any U.S. or Montana Supreme Court decision.

As a business owner I have employed homosexuals. They are good workers and I've treated them no differently than any other employee. We're all Americans, but since I am morally opposed to homosexuality, I am afraid that if I ever had to dismiss a homosexual employee they might perceive it for reasons other than actual. An overzealous lawyer could land me in an expensive court battle.

It is wrong for homosexuals to imply that they lack adequate protection without special provisions in this bill. In prior sessions I've testified on homosexual legislation, beginning in 1991. In 1993 there were 4 homosexual bills, and now same-gender marriage. I believe most of this legislation is coming from other states.

Many homosexuals are coming here to live, even though we have the toughest laws in the U.S. They come because we have a good environment in which to live. Montana is a friendly state and we don't need laws like this.

However, right now on Met Net, the Office of Public Instruction advertises for a person to come to your school and teach courses on homophobia. And, in Bozeman there are more offensive remarks and attacks against Californians than against homosexuals.

I am morally opposed to homosexuality. It is a dangerous lifestyle - high percentage of AIDS cases stem from it. I've taught my son that it's wrong and will continue to do so, but I will never, ever attack a homosexual. They are equal to me, and I want that to remain. I urge your defeat of this bill.

Questions From Committee Members and Responses: SEN. CRIPPEN. I notice from your handout that Texas has a law that addresses hate crimes in general terms, to include crimes based upon sexual orientation, but does not name any specific characteristics. Are you familiar with this? Holly Franz. I'm not familiar with this, but they usually have language similar to this legislation.

SEN. CRIPPEN. My concern is the same that I have raised before, about laundry lists in legislation. I don't like them at all. Remember, after Viet Nam, military personnel were spit upon, threatened, and beat up, and they are not included in this list. I've asked Valencia to look at the Texas legislation to see how it is drafted.

SEN. DOHERTY. Can you list for me the immutable characteristics of those who practice the Jewish faith? Tammy Schnitzer. There aren't such characteristics. My children and my husband did not choose to be in this position.

SEN. DOHERTY. The opponents stated that inclusion of this group of people would elevate them to a special class. Holly Franz, Helena attorney. Hate crime legislation has been upheld in the past by the Supreme Court. I don't know if a laundry list can be

called a special class, as these people tend to be targeted for hate crimes.

SEN. DOHERTY. Would including sexual orientation in the list of hate crimes grant, in any way, employment preference? **Holly Franz.** No, it simply says the state won't tolerate hate crimes against any group.

SEN. DOHERTY. Would including sexual orientation in this list, in any way, grant housing preference to these people in Montana? **Holly Franz.** No, it should not have that effect.

SEN. ESTRADA. We come from the same community, and I am very familiar with the incident that happened to you and your family. I am asking you to address a situation in our community now where people are disagreeing over the construction of the Mormon cathedral. Is putting a laundry list in the code going to deter people's paranoia and fussing over race, creed, color? Do you believe in your heart that this legislation will make a difference? My grandchildren are racially mixed (black) and have suffered. **Tammy Schnitzer.** There are people in our community to understand, and if we don't set the example, who's going to? We need to focus on tangible ways to do this. We just need to know when to stop the different levels of hate.

SEN. BARTLETT. You spoke of a contradiction in this bill, as the sexual behavior of homosexuals in Montana is currently a felony. If the Supreme Court strikes down current law, would that affect your decision about this bill? **Laurie Koutnik.** My main concern with this bill is that there are already criteria in place to give this protection, and behavior is not one of those criteria. Every citizen in the U.S. and Montana, already has this protection, and we don't need to add another layer. Where do we draw the line? We need to be consistent with equal standards, and have the three already established by the Supreme Court.

SEN. BARTLETT. Would you prefer to see this whole statute repealed? **Laurie Koutnik.** I'm not suggesting that we remove this statute, I'm saying don't add sexual orientation to it. The definition of sexual orientation could include pedophiles, bestiality, a father with a sexual orientation toward his 18-year-old daughter, I don't know - so the language in this bill won't work.

SEN. CRIPPEN. I would say I don't think the statute is working at all, so we keep adding and have made it exclusive rather than inclusive. Again, I would have you look at the Texas law, although it may or may not be the way to handle this thing. In Article 42 it covers offenses because of bias or prejudice, and says the Court shall make an affirmative finding in these cases. In the punishment phase of the trial, the offense is increased to the punishment prescribed for the next highest category. We would have to look at their law to know what this is. They've taken a generic approach, and don't have a laundry

list. It may not solve all your problems, but it might help a law that appears not to be working.

SEN. BARTLETT. On the grounds of 'immutable characteristics' should the Committee look at striking 'religion' and 'creed' from the statute, as theses are not immutable characteristics? **Steve White.** I'm going along with what the U.S. and Montana Supreme Courts have upheld in the past. The issue of sexual orientation is not new, and has not been allowed to be added in the past. When this issue came before Congress not long ago, they also narrowly turned it down. It's not my issue to analyze other than what has already been upheld.

SEN. BARTLETT. Do you consider religion an immutable characteristic? I'd have to look and see how it's defined in law.

ACTING CHAIRMAN HOLDEN. Is there a bill now to legalize gay and lesbian sexual activity? **SEN. BROOKE.** I turned in a bill draft request in March of 1995, during that session, but have yet to decide whether to introduce that piece of legislation.

Closing by Sponsor: **SEN. BROOKE.** I thank the Committee for a good hearing, and also those who traveled distances to be heard as well as those with the courage to tell their stories. I hope you set aside your deeply held religious beliefs and concerns with lifestyles not acceptable to you, as you listened. I want you to focus on the fact that we're dealing with criminal behavior.

In 1995 graffiti was written on the front of the Capitol, directed to gays and lesbians. Seven of ten members of the Senate Judiciary Committee signed SR 5 that year, appealing for tolerance and rejecting all expressions of hate and bigotry. I really appreciated the support we received in that resolution. This bill rejects those expressions and says to the perpetrators that we will not tolerate such.

It is important to continue to polish our image nationally in Montana, and I believe this bill would help. My page is from Hellgate High School in Missoula, and shared some of the things that happen to gay students, or those who appear to be gay, in the school.

This is a serious problem in our state and we've only seen the tip of the iceberg. I would argue with the opponents who asked why we don't include children. I don't see that sexual crimes against children or the elderly are based on hate, but rather that they are easily victimized because of their vulnerability.

This law was upheld in Wisconsin by the Supreme Court when it was challenged. This is one way we can send a strong message in overcoming this hate. Good education in our law enforcement will help in dealing with hate crimes in Montana.

{Tape: 3; Side: A; Approx. Time Count: #1.5; Comments: 11:35 a.m..}

EXECUTIVE ACTION ON SB 263

Motion: SEN. BISHOP MOVED SB 263 DO PASS.

Discussion: SEN. JABS. Does this have anything to do with augmented estates? SEN. BISHOP. No.

ACTING CHAIRMAN HOLDEN. Is there anything to do with life insurance in this bill? SEN. BISHOP. No.

Vote: SEN. BISHOP'S MOTION THAT SB 263 DO PASS CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 329

Amendments: sb32901.agp - EXHIBIT 14

SEN. HALLIGAN. There was one amendment that Valencia Lane and I worked on, as a page was missed when the FAX came in (sb32901.agp)

Motion: SEN. HALLIGAN MOVED TO ADOPT THE AMENDMENTS.

Discussion: SEN. HALLIGAN. SEN. NELSON had a concern in her coop in Plentywood which was dissolving and wanted to give property such as computers to the school. This amendment addresses those concerns. The other amendment is a clean-up amendment.

Vote: SEN. HALLIGAN'S MOTION TO ADOPT THE AMENDMENTS TO SB 329 CARRIED UNANIMOUSLY.


Motion: SEN. HALLIGAN MOVED SB 329 DO PASS AS AMENDED.

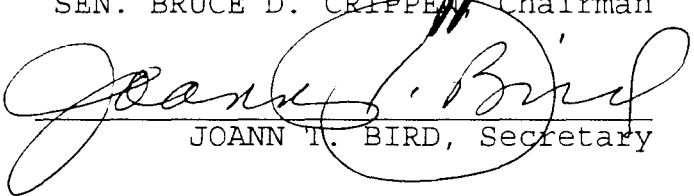
SEN. HALLIGAN. I will make sure we have a good explanation when the bill gets to the floor, as these changes make it more efficient for businesses to do business in Montana. The bill gets us up to speed on Uniform Limited Partnerships and Limited Liability Companies, to be consistent nationally and stay competitive.

Vote: SEN. HALLIGAN'S MOTION SB 329 DO PASS AS AMENDED CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 11:45 A.M.


SEN. BRUCE D. CRIPPEN, Chairman


JOANN T. BIRD, Secretary

BDC/JTB