

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 17, 2005 at
10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SJ 4 and SB 199, 1/11/2005
Executive Action: None.

HEARING ON SJ 4**Opening Statement by Sponsor:**

SEN. JOHN COBB, SD 9, AUGUSTA, opened the hearing on **SJ 4**, Urge review and adoption of tribal-secured transaction codes. **SEN. COBB** stated that this resolution would assist tribal courts with training on Article 9, commercial secured transactions. He explained that it was a law that involves the use of personal property as collateral to secure the creditors interest. **SEN. COBB** provided examples of the kinds of collateral which could be used. He went on to say that the National Conference of Commissions on Uniform State Laws was currently updating a model tribal secured transaction law or laws that would better reflect up-to-date commercial codes and also attempt to harmonize state law with tribal law. **SEN. COBB** pointed out codes which are being used presently by the various tribes. He concluded by stating that the bill was trying to get the tribes to review and update their commercial codes and if they needed assistance would the Legislature, Montana Law School or the Bar Association assist in training. He then stated that across the nation it had been found if there were good secured transaction laws there would be a better chance of economic development.

Proponents' Testimony:

Jill Jarmin, Director, Public Relations and Communications, with the Montana Credit Union Network, spoke in support of SJ 4. **Ms. Jarmin** read her testimony into the record and submitted a written copy of that statement which is attached hereto as Exhibit 1.

EXHIBIT(jus12a01)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. COBB closed.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 8.2}

HEARING ON SB 199**Opening Statement by Sponsor:**

SEN. KEN TOOLE, SD 41, HELENA, opened the hearing on **SB 199**, Include sexual orientation in human rights and other law. **SEN. TOOLE** stated that the bill was a revision to the State's anti-discrimination statutes of the Montana Human Rights Act. He then referred to the bill and indicated that the bill was adding to the basis of discrimination the term "sexual orientation". **SEN. TOOLE** indicated that the areas where discrimination occurred were employment, housing, finance, education, public services, public accommodations, employment in state and local government, employment referrals, licensing, provision of government funds and government services. He then discussed the ballot initiative regarding the Gay Marriage Ban which had been adopted by the people of Montana. **SEN. TOOLE** stated he had been informed by many people that they did not want to see individuals discriminated against even though they had voted for the Gay Marriage Ban. He concluded by saying that it was a common perception that American Democracy is a rule of the majority, however, a more superior rule should be the protection of minority rights.

Proponents' Testimony:

Karl Olson, Director of PRIDE, advocacy organization for Montana's Gay and Lesbian Community. **Mr. Olson** discussed the Montana Constitution and mainly the words, "We the people". He went on to say that these were words of inclusion not exclusion. **Mr. Olson** referred to the Netzenger Decision and the response to that decision. He went on to say that anti-gay discrimination was real in Montana and weakens the communities. He then gave examples of several cases of discrimination that he was aware of. **Mr. Olson** talked about gays and lesbians being excluded from full citizenship. He concluded by asking the Committee to ban sexual orientation in Montana's Civil Rights Code.

Starshine, Great Falls, spoke in support of SB 199 and provided her written testimony which is attached as Exhibit 2.

EXHIBIT(jus12a02)

Colleen Murphy, Executive Director, Montana Chapter, National Association of Social Workers, introduced Logan, three years of age. **Logan** stated, "If you be good, I will give you some candy." **Ms. Murphy** showed a family picture to the Committee of her cousins Sara and Amy who were recently married, and her wish that

they will be able to live their lives safe and happy. **Ms. Murphy** stated that her professional position is, "same gender orientation should be afforded the same respect and rights as other gender orientation." She went on to say that discrimination and prejudice directed against any group would be damaging to the social, emotional and economic well being of those affected and society as a whole. She went on to say that the National Association was against any type of discrimination for any reason.

Terry Kendrick, Montana Human Rights Network, discussed the history of the United States and of discrimination. She went on to talk about Martin Luther King and Senator Lee Metcalf. She stated that Montana's history showed that things were not better when rights are denied. She concluded by asking for a do pass on SB 199. **Ms. Kendrick** read **Robert Liston's** testimony into the record. **Mr. Liston** requested a favorable vote for SB 199 and to give persons covered under the Human Rights Act protection based on sexual orientation.

Brenda Wahler, Helena, talked to the Committee about her gay daughter and her right to be treated fairly and equally. She urged the Committee to pass the bill.

{Tape: 1; Side: A; Approx. Time Counter: 8.2 - 22.5}

Jayce Cox, Montana Gay Men's Task Force, stated that gay men, lesbians and bisexual and transgender people do contribute to society. He talked about his employment and background. **Mr. Cox** asked that the Committee honor the Constitution and pass SB 199.

Martha Kohl, Helena, discussed human rights and stated that she believed gays and lesbians deserved the same protections as everyone else.

John Schneeberger, Bitterroot Human Rights Alliance, Hamilton, stated that all of his members urged passage of SB 199. **Mr. Schneeberger** talked about a friend who had been fired from her job because she was a lesbian. He concluded by urging the Committee to vote "Do Pass" for SB 199.

Linda Gryczan, representing **The Montana Women's Lobby**, spoke in support of SB 199. **Ms. Gryczan** provided written testimony which is attached as Exhibit 3.

EXHIBIT(jus12a03)

John Lewis, Great Falls, stated that he was representing his son. He spoke of his son's education and the fact that his son did not

live in Montana because he could not practice his profession without the fear of discrimination, being fired and fear for his safety. He went on to say that he had a dream that someday his son could return to Montana to work and be judged for that work, not for his sexual orientation. **Mr. Lewis** urged the Committee to vote yes on SB 199.

Charles Walter, Billings, stated that the Montana Human Rights Act was designed to protect Montana citizens against discrimination. He asked whether or not the State of Montana had the obligation to protect all of its citizens. He concluded by asking for a "Do Pass" on SB 199.

Betty Kijewski, Montana Human Rights Network, informed the Committee that she was there specifically because the youth she works with are harassed and discriminated against in their schools. She went on to say that she had worked with youth that had been denied classroom opportunities, teachers that berated them, graduation requirements changed or altered, thrown out of public restaurants and told they cannot use the bathrooms between classes because of their perceived or actual sexual orientation. She further stated that this discrimination affected their abilities to succeed. **Ms. Kijewski** concluded by saying she felt this type of behavior was inexcusable.

Thomas Gocksch, stated that he was a second generation Montanan and had lived in the State his entire life. He talked about his education and job with the State and the fact that he was protected against discrimination. He then spoke of the fact that he was often able to "fly under the radar", as in most cases he was perceived as being straight. **Mr. Gocksch** talked about the need for all individuals to be treated equally and fairly whether they are straight, perceived as straight, gay or lesbian. He stated that he was virtually begging them to pass the bill.

Mary Lesley, Bozeman, stated that she urged the Committee to pass SB 199, as she believes that it will form the groundwork for a true and equitable administration of public and private financial matters. She went on to explain what had happened to her when her partner of eight years was killed.

Rick Wagner, Crisis Response Therapist for Western Montana Mental Health Center, spoke in support of SB 199. **Mr. Wagner's** written testimony is attached as Exhibit 4.

EXHIBIT(jus12a04)

Paul Johnson, Billings, spoke of his personal experiences of losing his job and the problems encountered renting a home

because he was gay. He stated that discrimination does exist and that he was risking losing his job because he was testifying for passage of SB 199. He concluded by urging the Committee to support the bill.

Margarita McLarty, Livingston, talked about her religious beliefs and the need for equality. She strongly urged the Committee to support SB 199.

Brad Martin, Executive Director, Montana Democratic Party, stated that he strongly supported SB 199. He proceeded to talk about the speech of Martin Luther King on the Capitol Mall and the message to give all Americans the liberty of civil rights. He went on to say that the bill's intent was to end discrimination in employment, public accommodation, housing, finance, education and to end discrimination by the State. **Mr. Martin** went on to say that it was time to end discrimination and establish basic rights.

Don Judge, Teamsters Local 190, expressed their support for SB 199. He stated that the labor movement had been trying to end discrimination in the workplace, housing, finance and other areas of human life and endeavor. **Mr. Judge** provided the Committee with a copy of the Teamster's Resolution in Support of Human Rights (attached as Exhibit 5). He then stated that the National AFL-CIO had also adopted positions in support of ending discrimination. He concluded by saying SB 199 was a good idea that was long overdue.

EXHIBIT(jus12a05)

Wayne Lewis, Native Montanan, spoke in support of SB 199 and provided his written testimony to the Committee and is attached as Exhibit 6.

EXHIBIT(jus12a06)

Dave Jones, Bitterroot Valley, stated that passage of a bill such as SB 199 would send the message that discrimination against anyone no matter what their race, gender or sexual orientation was not acceptable in Montana.

Mija, Montana Youth Queer Action Coalition, stated that she was a lesbian and explained to the Committee that she had been dropped from school in her senior year because of her sexual orientation. She went on to discuss other incidents that had happened to her and her friends. She ended stating that a bill like SB 199 would help to protect her and her friends.

Luke Van Helden, Missoula County Public Schools, spoke in support of SB 199 and provided the Committee with a copy of his written testimony which is attached as Exhibit 7.

EXHIBIT(jus12a07)

Ronald Greene, Great Falls, indicated that he was a Pastor of a Church. He stated, in his Church, they all tended to agree that all people were God's children and created in his image and deserved equal protection under the law. He went on to say that they needed to speak up for those who are perceived as gay, lesbian, bisexual or trans-gender so that they are not harassed; thereby making Montana a safe place for them to live, a place they can live with the same privileges as everyone else.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 24.2}

Gary Stallings stated that as a civilized society it would be his hope and desire to see no discrimination for any particular group, no matter how large or small.

Ruth Fletcher, Minister, Disciples of Christ Church, stated that she was concerned about the language of the bill, because of the people who would say that there was no need to be specific about homosexuality being a class that was in need of special protection. She went on to say that she felt they needed to be explicit about the kind of protection given for human rights for all individuals. She concluded saying that it was an issue of language that needed to be addressed and she urged the Committee to pass SB 199.

Bernadette Kneefe, Missoula, stated that Martin Luther King had a dream. She continued saying that some of them still do and that dream was to end discrimination. **Ms. Kneefe** asked the Committee to pass SB 199 and end discrimination in Montana.

Tegan Maynard-Hahn, Helena, talked about the "Day of Silence" held at Capital High School to recognize the silence that gays, lesbians, bisexual and trans-gender people have felt throughout the years. **Ms. Maynard-Hahn** stated that there was a growing conscientiousness in the schools about the rights of LGBT individuals and urged the Committee to think of those people and their rights.

Mary Anne Guggenheim, Helena, former Legislator and retired physician, stated that 80 years ago there was legislation to give women the right to vote, 40 years ago it was for racial reasons and now it was equality for sexual orientation. She went on to

say that she was asking the Committee to be fair and vote for SB 199.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 4.8}

Opponents' Testimony:

Dick Green, former Legislator, provided the Committee with a list of six different items that he would not vote yes on when he was a legislator. The list is attached as Exhibit 8. **Mr. Green** stated that he was opposed to the bill because he felt it was a direct frontal attack on the family unit. He went on to say that if they did not protect and hold society to good traditional values within the family unit the families could fail and if that happened the nation would fail.

EXHIBIT(jus12a08)

Dallas Erickson, representing Montana Citizens for Decency Through Law, spoke in opposition to SB 199. **Mr. Erickson** provided written testimony which is attached as Exhibit 9.

EXHIBIT(jus12a09)

William D. Wise, Retired Doctor of Internal Medicine, spoke in opposition to the bill. **Dr. Wise's** written testimony is attached as Exhibit 10, along with supporting documentation.

EXHIBIT(jus12a10)

Eric Schiedermayer, Executive Director, Montana Catholic Conference, expressed his opposition to SB 199 and provided his written testimony to the Committee which is attached as Exhibit 11.

EXHIBIT(jus12a11)

Esther Fishbaugh, Bozeman, spoke in opposition to SB 199. **Ms. Fishbaugh's** written testimony, along with documentation supporting her views, is attached as Exhibit 12.

EXHIBIT(jus12a12)

{Tape: 2; Side: A; Approx. Time Counter: 4.8 - 27.4}

Phil DuPaul, provided his written testimony (attached as Exhibit 13) and spoke in opposition to SB 199.

[EXHIBIT\(jus12a13\)](#)

Richard Bennett, Bozeman, spoke in opposition to SB 199. **Mr. Bennett** provided written testimony which is attached as Exhibit 14. **Mr. Bennett** also distributed a paper by Dan Garcia which he discussed and is attached as Exhibit 15.

[EXHIBIT\(jus12a14\)](#)

[EXHIBIT\(jus12a15\)](#)

Merry Nelson, Bigfork, stated she was concerned about the implications the bill would bring against those individuals that are Christians.

Gloria Hardin, Bozeman, discussed her opposition to SB 199. **Ms. Hardin's** written testimony is attached as Exhibit 16.

[EXHIBIT\(jus12a16\)](#)

Lynn Stumberg, Montana Eagle Forum, stated that the Sponsor of the Bill was trying to add the words "sexual orientation" to several sections of the law. She went on to say that by law homosexuals already have the rights being requested.

Jill DeClancy on behalf of Rachel Roberts, Montana Family Foundation, stated that the bill failed to define sexual orientation. She continued stating that the bill would protect child molesters, prostitutes and those individuals who practice incest. **Ms. DeClancy** further commented that the bill would curtail the freedom of institutions that would want to hire persons of faith to provide services. She then discusses a similar law in California which prohibits organizations from using a religious qualification for hiring individuals that provide services to them. **Ms. DeClancy** referred to the Public Accommodation Section and stated that it would most likely be used against religious-based businesses, such as Christian book stores. **Ms. DeClancy** went on to discuss the housing provision, Section 6, Section 7, Christian Schools and Charities and Section 16 and indicated the problems they would cause particular individuals and organizations.

Venice Coates, Hamilton, expressed her opposition to SB 199 and provided her written testimony which is attached as Exhibit 17.

[EXHIBIT\(jus12a17\)](#)

Julie Milum, Montana Family Coalition, stated that she had 15 good reasons to oppose sexual orientation. **Ms. Milum** provided a copy of the 15 reasons (Exhibit 18) and read reasons number 6 and 13. She went on to ask the Committee to table the bill as it had been tabled in the past.

EXHIBIT(jus12a18)

David Higby, Helena, stated that he was representing his family. He asked the Committee to oppose the bill so that his children could have an education that is not opposed to the values he teaches and they hold. He went on to say that whenever one group of individuals is held over another there would always be someone that was being discriminated against.

Candy Matthew Jenkins, Missoula, discussed her sister who had been molested and raped by a teacher's aide and the problems she had incurred as a result of that treatment. She concluded by saying that she felt if this was forced on the population of Montana the problems would be so vast that you would wish that this bill had not passed.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 26.7}

Harris Himes, representing himself, spoke in opposition to SB 199 and related the areas in the bill which he felt were of the most concern.

Dancing Bear, Hamilton, testified in opposition to SB 199. **Mr. Dancing Bear** provided written testimony which is attached as Exhibit 19.

EXHIBIT(jus12a19)

Charles Buck, Helena, stated that he respected the feeling and passion that went into the bill, however, he felt it was dangerous in three areas. He proceeded speaking about the problems he felt the bill would cause churches.

Chuck Lawrence, **Kalispell**, stated, "Never vote for this. Never vote for this."

James M. Verbanick, Helena, stated that he felt that "we the people" had already voiced their opinion in Montana and the majority of the people have already said what they believed marriage to be, therefore, he would like the Committee to vote in opposition to SB 199.

Lynn Baber, Belgrade, spoke about her concerns regarding the sexual orientation wording. She went on to say that she felt it was too big an opening for too many problems. She concluded by requesting the Committee to vote against SB 199.

Jane Nofsinger, Lewis and Clark County, expressed her opposition to SB 199.

Leon Nelson stated that he was opposed to the bill. He went on to say that when you start honoring one group with special rights or protections over others, it would become a never ending problem.

Informational Testimony:

Jerry Keck, Administrator, Employment Relations Division, Department of Labor and Industry, stated that the Human Rights Bureau was a department within the division of which he was the Administrator. He went on to say that SB 199 would change the statute that the Human Rights Bureau and Human Rights Commission Administer. Therefore, should SB 199 pass, his Department would conduct the investigations of complaints under the Act. He concluded saying that he would be available to answer questions.

Questions from Committee Members and Responses:

SEN. ELLINGSON asked **Dallas Erickson** in cases where there was a worker who had been doing a job, with complete satisfaction to the employer for an extended period of time, why society would be better off to give the employer the right to terminate that person's employment simply because the employer found out the person was either gay or lesbian. **Mr. Erickson** responded giving as examples: the Boy Scouts being the employer and the problems encountered by the Catholic Church with the result that homosexual males had preyed on young boys. He continued by saying that in those situations he felt it would be valid for an employer to be able to terminate a gay or lesbian person's employment.

SEN. ELLINGSON asked **Mr. Erickson** how that would work if the person worked for an entity such as Smurfit Stone, had done a good job for twenty years and all of a sudden it was discovered that the person was a gay or lesbian; why it would be right for the employer to terminate that person's employment. **Mr. Erickson** stated that he believed that the employer would have the right to employ a homosexual or not. He went on to say, if they were to say a person could not terminate an individual's employment because of being a gay or lesbian, they were putting

organizations such as the Boy Scouts or the YMCA in the position of having pedophiles or homosexuals work for them.

SEN. ELLINGSON further inquired of **Mr. Erickson** if he had a problem with employment discrimination against homosexuals in certain employment situations or in all employment situations.

Mr. Erickson replied that if you say an individual cannot terminate someone who is a homosexual, it would be applied to everyone and he did not feel that would be fair. He continued by saying he felt anyone who hired someone should have the right to choose whether or not that person could work for them, no matter what their sexual orientation was. He concluded that he felt they needed to provide that right to all employers and organizations.

SEN. ELLINGSON asked **Mr. Erickson** if they could separate the two types of organizations, would he have a different view. **Mr.**

Erickson replied if it was possible to do so and not infringe on the rights of those concerned who did not want to employ people with a different sexual orientation than heterosexuality, he probably would.

SEN. ELLINGSON referred to Section 5 which would prohibit discrimination in credit and financing transactions and asked **Mr. Erickson** why it would make us a better society to allow a banker to decline to give a loan to someone simply because the person was a gay or lesbian. **Mr. Erickson** stated that once sexual orientation was placed in the law it would open it up for everything. He went on to say he did not know how it could be limited. He concluded stating, that in his opinion putting sexual orientation into the law would be wrong.

SEN. MCGEE asked **SEN. TOOLE** if he hired a man and that man made sexual advances toward his daughter, under the bill, would he have the right to fire that individual. **SEN. TOOLE** replied that he believed so.

SEN. MCGEE then asked **SEN. TOOLE** why he would believe so. **SEN. TOOLE** replied that in any employment circumstance, sexual advances would be a legitimate reason for discipline. He went on to say that he could not imagine in any way that SB 199 would force an employer to accept criminal conduct toward other employees.

SEN. MCGEE further inquired of **SEN. TOOLE** if an employee were to make sexual advances towards his 24-year-old daughter if he would have the right to fire that individual. **SEN. TOOLE** responded that he believed that Montana was an "at will" State and he would be able to dismiss the employee for that kind of conduct.

SEN. MCGEE asked **SEN. TOOLE** exactly what his bill would do. **SEN. TOOLE** replied that it was the difference in treatment of heterosexual employees versus the treatment of homosexual employees, not the conduct of the employees.

SEN. MCGEE stated that every proponent of the bill spoke about gays or lesbians, therefore, he asked if **SEN. TOOLE** would be agreeable to amending the bill to use the term homosexuality instead of sexual orientation. **SEN. TOOLE** stated he would not.

Closing by Sponsor:

SEN. TOOLE stated that under the Constitution, a person would not have to have an immutable characteristic in order to receive the protection of the law. He went on to say that marital status, religious beliefs, etc. were "choices" that people made and these things were protected under the law. He then stated, when civil rights were viewed as special rights people received because they could not help themselves, the law had been turned upside down. **SEN. TOOLE** stated that the problem was within society and there was a problem when an individual could only get protection because they could not help the problem, such as being black, that they were placing the responsibility for a societal problem on the victims. **SEN. TOOLE** concluded saying that the concept of just discrimination was in the law and an employer could raise a defense of a legitimate business consideration. He went on to say, if they did have a legitimate business consideration for the decision they made in a discrimination case, it would be a defense. He quoted what James Madison had once said, "In republics, the great danger is that the majority may not sufficiently respect the rights of the minority." He then stated that SB 199 was a bill to protect the rights of the minority.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 24}

ADJOURNMENT

Adjournment: 12:15 P.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus12aad0.PDF](#))