EXHIBIT 4
DATE 1-31-05
HB 419

Testimony to the House Business Committee

My name is Jim Nys, I am a self-employed human resource professional and am one of nearly 900 members of the Society for Human Resource Management (SHRM) and its affiliated chapters in Montana. I work with hundreds of employers around the state, many of which have indicated their support for my opposition to HB 419.

For many years, the Montana Supreme Court consistently applied the "At Will" doctrine to employment relationship cases. The principle of "at-will" employment refers to the right of employers to terminate the employment relationship for any or no reason. It was in the early 1980's, however, that opinions from the Court began to hint at the existence of a new doctrine applicable to the employment relationship - The Covenant of Good Faith and Fair Dealing.

The first case in which the Court imposed the new doctrine upon a Montana employer was one brought against a Bozeman insurance company, Life of Montana, by discharged former employee. Life of Montana had issued an employee handbook that listed certain grounds for termination without warning. The employee claimed she was fired without warning for a reason not listed in the handbook.

While the Court rejected the argument that the handbook constituted a contract between her and the company it did find that employees were protected by a " covenant of good faith and fair dealing [which] was implied in the employment contract." This decision radically changed the employment relationship throughout Montana. In subsequent cases, the High Court held that breaches of the covenant could subject the employer to damages including payments for emotional, mental and financial distress and punitive damages and that employees could sue over unfulfilled implications of job security made by supervisors.

Most managers became reluctant to terminate employees (even when justified) since no one was certain which actions on the part of employers would be approved by the court or a jury, and which would not. It seemed as though every layoff or termination of a disgruntled employee was being challenged in court and employers were routinely being subjected to substantial fines and other penalties. In 1987, for example, a jury awarded $2,500,000 to a wrongfully discharged employee. The courts were clogged with employment termination cases.

Following an unsuccessful attempt in 1985 to change the law, House Bill 241 - The Montana Wrongful Discharge From Employment Act - was introduced in the 1987 Legislature. The Bill was an attempt to resolve the problems and the uncertainty being created for employers by decisions of the Montana Supreme Court in the area of wrongful discharge.

The Bill that emerged from the Legislature and was signed into law was a compromise between numerous, diverse interests . Employers lost their freedom to terminate "At Will" in return for limits on the penalties and damages that could be assessed against them. Employees covered by the Act gained security against arbitrary dismissal. HB 241 went into effect July 1, 1987.

It didn't take long for challenges to be filed against the new law. In June, 1989, the Montana Supreme Court upheld the Montana Wrongful Discharge From Employment Act. The decision eliminated much of the uncertainty from the employment relationship. Employers could now know their obligations and employees their rights.

As an HR professional, I am tasked with balancing the needs of the employees with the health of the organization. The Wrongful Discharge Act has served both employers and employees well in the 18 years since it became effective. The 1987 compromise was an essential tool for HR professionals in fulfilling this capacity. By allowing expanded litigation, employer costs will rise and both the employee and the employer will feel this impact, i.e. there would be fewer financial resources for salary increases and benefits. Reversing the protections provided by the current law would harm the business climate by removing fairness in the state's employment law for both employees and employers.

HB 419 would be a giant step backwards for both employers and discharged employees. In my practice as a private consultant to business on discharge related matters, I do not find that employers view termination with a cavalier attitude. Frankly, most of my clients are scared to death of having to defend themselves in a wrongful discharge. One probable result of this bill would be that employers would be fearful of discharging even clearly substandard employees. This creates problems for the employer and the co-workers who must work in this environment.

Montana would become the only state in the nation to have given up the "At-Will" employment principle and both employers and employees suffer from this lack of balance.

I urge that you kill HB 419.