



TO: House Business and Labor
Committee
Lance L. Melton

FROM: Lance L. Melton, Executive Director
Montana School Boards Association

RE: House Bill 419

DATE: Monday, January 31, 2005

The Montana School Boards Association opposes HB 419 by Representative Cohenour. HB 419 provides for virtually unlimited damages for wrongful discharge. The Wrongful Discharge Act (WDA) applies to school districts with regard to employees not covered by collective bargaining or a term contract as a result of the Montana Supreme Court's ruling in Whidden v. Nerison, which eliminated "at-will" employment in Montana. With the variety of avenues for recourse currently provided to employees who are discharged from employment, there is no need for a further expansion of remedies as proposed in HB 419.

The WDA was first passed in 1987 as a compromise between management and labor, and provided the highest levels of protection against wrongful discharge in the nation. It eliminated a line of case law that was confusing to both those defending and pursuing wrongful discharge claims based on a violation of the covenant of good faith and fair dealing, and provided for a reasonable cap on damages at 4 times one's annual wages among other compromises

A wrongful discharge really is nothing more than a breach of contract. In all areas other than employment, damages for breach of contract are limited to actual damages. The WDA already expands that concept to include the possibility of punitive damages. In addition, an enterprising plaintiff's attorney has a number of additional avenues for recourse on behalf of a discharged employee, based on, for example, violations of the Human Rights Act under Title 49 of the Montana Code, civil rights violations under federal law, claims under the American's with Disabilities Act or the Age Discrimination in Employment Act.

By eliminating the cap on damages under the WDA, the average cost of settling a wrongful discharge claim will undoubtedly rise. School districts and other employers frequently balance the potential cost of litigation against the costs of a settlement, and will sometimes settle even when they believe they have sufficient cause for discharge. The change in HB 419 will raise the stakes on this consideration and will lead to higher costs in the operation of school districts, through settlements, litigation, and insurance premiums. Ultimately, with unlimited damages, there is a very real likelihood that school districts would exceed the coverage caps of their policies, which would leave school districts in the position of raising taxes through a judgment levy as provided by 2-9-316, MCA.

For the reasons above, MTSBA respectfully urges the Committee to table HB 419.