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January 28, 2005

Chairman Jim Keane
House Business and Labor Committee
Montana House of Representatives
PO Box 200400
Helena, MT 59620-0400

Re: HB - 419

Dear Chairman Keane:

I represent the Montana Automobile Dealers' Association. The Montana Automobile Dealers Association opposes HB -419 and urges a no vote in committee.

The Montana Wrongful Discharge from Employment Act (WDA, MCA 39-2-901, et seq.) was adopted by the Montana Legislature in 1987, and is effective to all discharges in Montana occurring after July 1, 1987. The Act was in a direct response to the concern for large jury awards for compensatory damages and punitive damages, i.c. *Gates v. Life of Montana Insurance Co.*, 196 Mont. 178, 638 P.2d 1063 (1982); *Crenshaw v. Bozeman Deaconess Hospital*, 213 Mont. 488, 693 P.2d 487 (1984); *Flanigan v. Prudential Federal Savings & Loan Assoc.*, 221 Mont. 419, 720 P.2d 257 (1986). Although historically and legally the employment relationship in Montana was considered at will, the Montana Supreme Court adopted the theory of the implied covenant of good faith and fair dealing which it implied in an at will employment relationship. The Montana court treated the traditional at will employee relationship as an at will contract and held that it, like other contracts, had implied in it the covenant of good faith and fair dealing. Montana had implied such a covenant in other contractual situations, namely *Nicholson v. United Pacific*, involving a breach of lease situation. The concern from the employer's viewpoint was that there were no specific guidelines or standards to determine what constituted a breach of the implied covenant of good faith and fair dealing other than "the justifiable expectation of the parties" allowing juries vast discretion to determine if there was a breach of the obligation of good faith and if so, to award compensatory and punitive damages.¹

Credit for this paragraph goes to Ronald Bender an attorney in Missoula. Use of this language does not imply that Mr. Bender either supports or opposes HB 419.

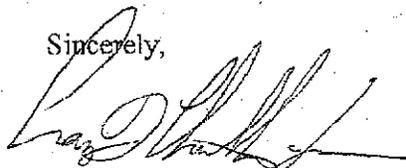
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HB - 419 once again opens the floodgate of unlimited liability on employers who discharge employees. The hard work of the 1987 legislature should not be forgotten or abandoned. The current Wrongful Discharge Act is working well and provides both employees and employers with a solid base upon which to base employment decisions, or decisions to sue for wrongful discharge. Passing HB - 419 will once again throw the parties into the sea of uncertainty. There will be litigation over whether an implied contract exists, whether there is a breach of the covenant of good faith and fair dealing, whether tort remedies and damages are available, and when back pay damages stop (it may well be prior to the four years provided in the current act). This litigation is costly for both employees and employers. The current law is working well and there is no need to further burden the court system with matters resolved in 1987.

The Montana Automobile Dealers Association urges a no vote on HB 419.

Sincerely,



BRUCE M. SPENCER
Attorney at Law

BMS/ab
cc: Marilyn Olsen
Our File# 11037