

SENATE EDUCATION

EXHIBIT NO. 5

DATE 2-14-05

BILL NO. SB-291

Montana Coalition of Home Educators

P.O. Box 43

Gallatin Gateway, MT 59730

<http://www.mtche.org>

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Lewistown
462-8000

Steve Lund
Billings
245-2980

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Stephen White - *Legislative Liaison*
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Gallatin Valley Homeschoolers
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Glendive Area Home Educators
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Independent Homeschoolers Network
Laurel Area Homeschoolers
Lincoln County Christian Home Educators
Meagher County Homeschoolers
Mission Valley Homeschoolers
Missoula Homeschoolers Association
Granite County Homeschoolers
Glacier County Home Educators
Park County Homeschoolers Association
Secley-Swan Homeschoolers
Shelby Home Educators
Whitehall Area Homeschoolers

Testimony of Steve White, Legislative Liaison Montana Coalition of Home Educators

To the Members of the Senate Education Committee

My name is Steve White. I reside in Bozeman, Montana. I presently serve as the Legislative Liaison for the Montana Coalition of Home Educators, a statewide organization of home schooling families dedicated to raising and educating their children to be productive and successful citizens in our state and country. I am also the publisher of the *Montana Guide to Home Education*.

This testimony is presented in opposition to SB291.

My wife Pam and I home educated our son Matt K-12. Matt graduated in 2000. He then entered MSU-Bozeman. He was awarded the Byrd Scholarship and the prestigious MSU Presidential Scholarship. He graduated from MSU in 2004 with 'highest honors' (3.95 GPA). He is now married and a productive citizen, living in Bozeman.

SB291, titled 'Quality Home School and Child Protection Act' is a bill that is both unnecessary and unwarranted.

Homeschooling families across Montana rise up in strong opposition to SB291. As you can see in this hearing, parents and their families agree that adding any part of this bill to Montana's statutes is wrong. For years, Montana legislators have debated this issue, and concurred that Montana's present homeschooling laws are adequate and are successful.

There are two sections of this bill that modify current sections of Montana's statutes that relate to non-public schools.

In **Section 10** of SB291, the sponsor is striking subsection 20-5-109 (5), and modifying subsection 20-5-109 (4) to use the word 'educational', instead of 'instructional'. This is the same section that was unanimously struck for Senator Ryan's SB152 in response to MCHE's objection in that hearing.

In 1983, SB445 was introduced by Senator Bob Brown. There was a great deal of debate regarding the passage of a bill that would exempt non-public schools (including home schools) from the compulsory attendance laws. Ultimately SB445 was passed 50-0 in the Senate and 62-14 in the House. Thus, the formation of 20-5-109 MCA. There is no need to revisit this statute and make changes to any of its present language. MCHE opposes changing 20-5-109 MCA.

In **Section 11** of SB291, changes are being proposed to regarding 20-5-111 MCA. In 1991, Senator Del Gage introduced SB287. I have attached a copy of the bill, which includes the list of 48 co-signers.

Included in the list of co-signers to SB287 is Senator Dorothy Eck of Bozeman. Senator Eck was one of the delegates to the 1972 Montana Constitutional Convention, and the author of the Article X, Sec 2(2) that recognizes the heritage of the American Indians in Montana's education.

The 1991 session was a unique session. The Democrats controlled the House and Senate, and the Governor was a Republican – Governor Stan Stephens.

Also, in 1991, House Education Chairman Representative Schye introduced HB533 to require annual testing of homeschool students.

The testing bill, HB533, was defeated in the House committee. Senator Gage's home education bill, SB287, passed the Senate 42-5 and passed the House 81-15. Senator Joe Mazurek was President of the Senate, and Rep Hal Harper was Speaker of the House that session. SB287 was signed into law on April 17, 1991 and is now 20-5-111 MCA. MCHE strongly opposes any modification of 20-5-111 MCA as proposed in Section 11 of SB291.

SB291 also will require a homeschool student to be tested in a public school, by a public school teacher. This is in direct conflict with current Montana law. 20-5-111 MCA specifically states that the parent is 'solely' responsible for '(4) the evaluation of the home school instruction'. The word 'solely' means that the responsibility is entirely the parent's. In 1991, the word 'solely' was added to Senator Gage's SB287 on the floor of the Senate as an amendment. The amendment passed 50-0.

In considering SB291, it is very important to understand the history of debate regarding non-public schools in the last 20 years. This bill would undermine the

God-given rights that parent's have to raise their children and make decisions regarding their children's education.

In Article II, Section 10 of the Montana Constitution, citizens are guaranteed the 'Right of Privacy'. Every citizen has the 'right of individual privacy' and unless our government can demonstrate a 'compelling state interest', families expect their privacy to be honored. SB291 establishes a monitoring system to examine their homeschooling and family environment.

SB291 is a bill that demonstrates suspicion and doubt regarding home education. Current Montana law contains very specific language regarding education. As in all the other states, Montana requires all children to attend school. Our compulsory attendance laws are very similar to other states. If a child is between 7 and 16, they must attend school (20-5-102 MCA). But, if the student complies with the elements of 20-5-109 MCA, there is provision for exemption from public school enrollment.

ANY student who does not comply with all required subsections of 20-5-109 MCA, IS NOT exempt from Montana's compulsory attendance laws. HE OR SHE IS then technically truant. 20-5-106 MCA authorizes truant officers to act 'whenever the truant officer discovers a child truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction....'

Parents who falsely claim to be home schooling are not providing the required instruction. There is no loophole. Truant parents cannot pretend to be one of us – they are not home schoolers.

Does the truant officer need more power? No.

A quick review of 20-5-105 MCA demonstrates that the truant officer has extraordinary powers. **Subsection 1** gives him police power, which inherently includes the power to make investigations and explicitly includes the power to serve warrants. **Subsection 2** gives the truant officers the authority to take children into custody and take them to school. **Subsection 3** gives him the power to do 'whatever else is required to investigate and enforce the compulsory attendance law.' And **Subsection 4** gives him the power to commence legal action against truant parents and children.

You will find no broader grant of authority to truant officers anywhere in the nation.

Testing Studies in Montana – 1992 & 1995

In 1992 and 1995 the Montana Coalition of Home Educators contracted with Dr. Brian Ray of National Home Education Research Institute to evaluate test results in Grades 1-12. Parents submitted student test results on a volunteer basis. Provided with my testimony is the complete 1995 study results by Dr. Brian Ray to each of the committee members. MCHE has invited Dr. Ray to Montana and the hearing on SB291 to respond to any questions from the committee.

Reporting to the school districts

Currently Montana homeschooling families are required to notify their local county superintendent annually (20-5-109 MCA). SB291 transfers the reporting authority to the local school district. To transfer this authority to the local school district creates a significant change in the purpose of an elementary and high school district as presently defined in statute (20-6-101(2) MCA). The school districts are organized for the purpose of providing public education and public education services – not evaluating and monitoring non-public homeschools.

Fiscal Note

SB291 requires additional taxpayer dollars. As suspected in it's initial draft, the passage of SB291 would be an unfounded mandate on local districts. Currently homeschooling parents are successfully educating their own children, while paying taxes to fund the public education system.

Conclusion

SB291 undermines a parent's right to direct the education of their children. The home schooling community in Montana opposes every element and aspect of SB291. It is especially troubling to see a bill that would potentially undermine a parent's right to educate their developmentally disabled child in the loving home that offers the best learning environment for the child.

Parents who have chosen to educate their children, have done so out of sacrifice. Often they have reduced their income by one person. As they continue to work and pay taxes for the public schools, they also are buying materials for their own school – with no tax benefit.

Home education in Montana is working. Home educated children continue to become solid citizens - determined to contribute to our state and nation.

There is no need to change Montana's statutes regarding non-public and home schools. Montana home schooling families are not requesting changes to our law. They are here requesting that present laws remain as is.

We respectfully ask that the Senate Education Committee vote NO on SB291.

Thank you for your service to Montana.

Attachments

SENATE BILL NO. 287

T Back

1 [Section 1] is intended to be codified as an integral part
2 of Title 20, and the provisions of Title 20 apply to
3 [section 1].

-End-

INTRODUCED BY *Rep. - Tracy, the Caucus. See Legislative Directory*

John Robinson, Glenn, Bill, Bingham, Brown, ...

BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH RESPONSIBILITIES AND RIGHTS OF A PARENT WHO PROVIDES A HOME SCHOOL AND RIGHTS OF A CHILD IN HOME SCHOOL."

13. 1999-07-13. Bill written by Glenn. ...

Glenn, ...

Henning, Anderson, ...

AKLESTAD ...

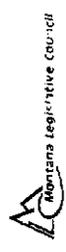
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Alammond, ...

NEW SECTION. Section 1. Responsibilities and rights of parent who provides home school -- rights of child in home school. (1) Notwithstanding the provisions of 20-5-109, a parent who instructs his child, stepchild, or ward in a home school is the sole authority and is responsible for all decisions regarding:

- 15 (a) the educational philosophy of the home school;
- 16 (b) the selection of instructional materials, curriculum, and textbooks;
- 17 (c) the time, place, and method of instruction; and
- 18 (d) the evaluation of the home school instruction.
- 19 (2) A parent who instructs his child, stepchild, or ward in a home school or a child who is instructed in a home school may not be discriminated against for the parent's exercise of responsibilities and rights provided for in subsection (1).

25 NEW SECTION. Section 2. Codification instruction.



INTRODUCED BILL
SB 287

SENATE BILL NO. 287

INTRODUCED BY GAGE, GRINDE, LEE, LARSON, GRADY, T. BECK,
J. RICE, R. DEBRUYCKER, M. HANSON, HAYNE, FELAND, BERGSAGEL,
SPRING, FRITZ, BURNETT, BARNETT, KELLER, ELLIS, WALLIN,
REA, RYE, GROSFIELD, B. BROWN, CRIPPEN, PHILLIPS, KEATING,
HARDING, ANDERSON, SWYSGOOD, ELLISON, T. NELSON, THAYER,
AKLESTAD, WILLIAMS, HAGER, PINSONEAULT, KOEHNKE, SIMPKINS,
HAMMOND, ZOOK, NOBLE, BOHARSKI, HARP, SWIFT, DEVLIN, KNOX,
GOULD, KASTEN, ECK

IN THE SENATE

FEBRUARY 5, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON EDUCATION & CULTURAL RESOURCES.

 FIRST READING.

FEBRUARY 19, 1991 COMMITTEE RECOMMEND BILL
 DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1991 PRINTING REPORT.

 SECOND READING, DO PASS AS AMENDED.

FEBRUARY 21, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 42; NOES, 5.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
 ON EDUCATION & CULTURAL RESOURCES.

 FIRST READING.

APRIL 2, 1991 COMMITTEE RECOMMEND BILL BE
 CONCURRED IN. REPORT ADOPTED.

APRIL 5, 1991 SECOND READING, CONCURRED IN.

APRIL 6, 1991 THIRD READING, CONCURRED IN.
 AYES, 81; NOES, 15.

 RETURNED TO SENATE.

IN THE SENATE

Montana Code Annotated 2003

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20-5-109. Nonpublic school requirements for compulsory enrollment exemption. To qualify its students for exemption from compulsory enrollment under [20-5-102](#), a nonpublic or home school shall:

(1) maintain records on pupil attendance and disease immunization and make the records available to the county superintendent of schools on request;

(2) provide at least 180 days of pupil instruction or the equivalent in accordance with [20-1-301](#) and [20-1-302](#);

(3) be housed in a building that complies with applicable local health and safety regulations;

(4) provide an organized course of study that includes instruction in the subjects required of public schools as a basic instructional program pursuant to [20-7-111](#); and

(5) in the case of home schools, notify the county superintendent of schools, of the county in which the home school is located, in each school fiscal year of the student's attendance at the school.

History: En. Sec. 2, Ch. 355, L. 1983; amd. Sec. 3, Ch. 498, L. 1989.

Provided by Montana Legislative Services

Montana Code Annotated 2003

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20-5-111. Responsibilities and rights of parent who provides home school. Subject to the provisions of [20-5-109](#), a parent has the authority to instruct his child, stepchild, or ward in a home school and is solely responsible for:

- (1) the educational philosophy of the home school;
- (2) the selection of instructional materials, curriculum, and textbooks;
- (3) the time, place, and method of instruction; and
- (4) the evaluation of the home school instruction.

History: En. Sec. 1, Ch. 444, L. 1991.

Provided by Montana Legislative Services

Montana Code Annotated 2003

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20-5-102. Compulsory enrollment and excuses. (1) Except as provided in subsection (2), any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year shall cause the child to be instructed in the program prescribed by the board of public education pursuant to [20-7-111](#) until the later of the following dates:

- (a) the child's 16th birthday;
- (b) the date of completion of the work of the 8th grade.

(2) A parent, guardian, or other person shall enroll the child in the school assigned by the trustees of the district within the first week of the school term or when he establishes residence in the district unless the child is:

- (a) enrolled in a school of another district or state under any of the tuition provisions of this title;
- (b) provided with supervised correspondence study or supervised home study under the transportation provisions of this title;

(c) excused from compulsory school attendance upon a determination by a district judge that attendance is not in the best interest of the child;

(d) excused by the board of trustees upon a determination that attendance by a child who has attained the age of 16 is not in the best interest of the child and the school; or

(e) enrolled in a nonpublic or home school that complies with the provisions of [20-5-109](#). For the purposes of this subsection (e), a home school is the instruction by a parent of his child, stepchild, or ward in his residence and a nonpublic school includes a parochial, church, religious, or private school.

History: En. 75-6303 by Sec. 116, Ch. 5, L. 1971; amd. Sec. 1, Ch. 389, L. 1971; amd. Sec. 3, Ch. 91, L. 1973; amd. Sec. 2, Ch. 137, L. 1975; R.C.M. 1947, 75-6303; amd. Sec. 1, Ch. 504, L. 1979; amd. Sec. 1, Ch. 355, L. 1983; amd. Sec. 1, Ch. 249, L. 1991.

Provided by Montana Legislative Services

Montana Code Annotated 2003

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20-6-101. Definition of elementary and high school districts. (1) As used in this title, except as defined in [20-9-402](#) for bonding purposes or unless the context clearly indicates otherwise, the term "district" means the territory, regardless of county boundaries, organized under the provisions of this title to provide public educational services under the jurisdiction of the trustees prescribed by this title. High school districts may encompass all or parts of the territory of one or more elementary districts.

(2) (a) An elementary district is a district organized for the purpose of providing public education for all grades up to and including grade 8 and for preschool programs and kindergartens. An elementary district may be inactive if the district attaches to a high school district under the provisions of [20-6-701](#) to form a K-12 school district.

(b) A high school district is a district organized for the purpose of providing those public educational services authorized by this title for all grades beyond grade 8, including postsecondary programs, except those programs administered by community college districts or the Montana university system. A high school district with an attached elementary district may provide the educational services for an elementary district through the procedures established in [20-6-701](#) through [20-6-703](#).

(3) An elementary district is known as "District No....., County" and a high school district, except a high school district where a county high school is operated, is known as "High School District No....., County". A district is a body corporate and, as a body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use, and dispose of real or personal property for school purposes, within the limitations prescribed by law. Unless the context clearly indicates otherwise, the trustees of elementary districts and high school districts have the same types of powers, duties, and responsibilities authorized and imposed by the laws of Montana.

(4) As used in this title, unless the context clearly indicates otherwise, a county high school is a high school district that has not unified with an elementary district under [20-6-312](#).

History: En. 75-6501 by Sec. 160, Ch. 5, L. 1971; R.C.M. 1947, 75-6501; amd. Sec. 6, Ch. 555, L. 1991; amd. Sec. 14, Ch. 219, L. 1997.

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Montana Code Annotated 2003

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20-5-106. Truancy. (1) Whenever the attendance officer discovers a child truant from school or a child subject to compulsory attendance who is not enrolled in a school providing the required instruction and has not been excused under the provisions of this title, he shall notify in writing the parent, guardian, or other person responsible for the care of the child that the continued truancy or nonenrollment of his child shall result in his prosecution under the provisions of this section. If the child is not enrolled and in attendance at a school or excused from school within 2 days after the receipt of the notice, the attendance officer shall file a complaint against such person in a court of competent jurisdiction.

(2) If convicted, such person shall be fined not less than \$5 or more than \$20. In the alternative, he may be required to give bond in the penal sum of \$100, with sureties, conditioned upon his agreement to cause the enrollment of his child within 2 days thereafter in a school providing the courses of instruction required by this title and to cause the child to attend that school for the remainder of the current school term. If a person refuses to pay a fine and costs or to give a bond as ordered by the court, he shall be imprisoned in the county jail for a term of not less than 10 days or more than 30 days.

History: En. 75-6307 by Sec. 120, Ch. 5, L. 1971; R.C.M. 1947, 75-6307.

Provided by Montana Legislative Services

Montana Code Annotated 2003

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20-5-105. Attendance officer -- powers and duties. The attendance officer of any district shall:

(1) be vested with police powers, the authority to serve warrants, and the authority to enter places of employment of children in order to enforce the compulsory attendance provisions of this title;

(2) take into custody any child subject to compulsory attendance who is not excused under the provisions of this title and conduct him to the school in which he is or should be enrolled;

(3) do whatever else is required to investigate and enforce the compulsory attendance provisions of this title and the pupil attendance policies of the trustees;

(4) institute proceedings against any parent, guardian, or other person violating the compulsory attendance provisions of this title;

(5) keep a record of his transactions for the inspection and information of the trustees and make reports in the manner and to whomever the trustees designate; and

(6) perform any other duties prescribed by the trustees to preserve the morals and secure good conduct of the pupils of the district.

History: En. 75-6306 by Sec. 119, Ch. 5, L. 1971; R.C.M. 1947, 75-6306.

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(3) The governing authority of a private institution may request the attendance officer to contact the county superintendent for a determination of whether a private institution is providing a basic instructional program.

(4) The county superintendent upon request by the attendance officer, shall contact the governing authority of the private institution and determine annually whether the children within his county who are attending a private institution are receiving a basic instructional program as set forth by the board of public education.

(5) If the county superintendent determines that the private institution is providing a basic instructional program as prescribed, the county superintendent shall notify the attendance officer that the private institution is providing the basic instructional program to the children of that institution and is therefore in compliance with the compulsory attendance law.

(6) Should the county superintendent determine that the children attending a private institution are not receiving a basic instructional program, he shall specify the deficiency(ies) to the governing authority of the institution and may allow the latter a reasonable probationary period of up to six months in which to correct the deficiency(ies), after which probationary period he shall report the same to the local attendance officer who then, if necessary shall pursue the remedies provided by law to assure that proper compulsory attendance at an institution with at least the basic instructional program is provided.

(7) The governing authority of a private institution which is found by the county superintendent not to provide a basic instructional program may appeal the county superintendent's decision to the board of public education and the board shall apply the Administrative Procedure Act in this appeal. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-3-205(22), MCA; NEW, 1981 MAR p. 1893, Eff. 1/1/82.)

Sub-Chapter 3

Compulsory School Attendance

10.65.301 GENERAL (1) The board of public education shall determine whether a private institution provides instruction in the program the board prescribes.

(2) The board of public education had designated as the basic instructional program the educational curriculum set forth in the Administrative Rules of Montana 10.55.402 and 10.55.403 as amended for application to private institutions.

(3) Students governed by compulsory attendance statutes, who are not enrolled and attending a public school must be enrolled in a private institution providing a basic instructional program as provided by the board of public education or be excused under another aspect of 20-5-10392), MCA. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-7-111, MCA; NEW, 1981 MAR P. 1892, Eff. 1/1/82.)

10.65.302 PROCEDURES FOR ATTENDANCE OFFICER (1) The attendance officer is mandated to enforce the compulsory attendance provision of Montana school law and has been vested with the necessary police and investigatory powers to enforce compulsory attendance provisions of Montana law to ensure the children are enrolled and attending a public school or enrolled in a private institution which provides the basic instructional program; as described in 10.55.402 and 10.55.403 of the Administrative Rules of Montana.

(2) In the capacity of enforcing compulsory school attendance law the attendance officer may notify the county superintendent of his county of the existence of the private institution after determining that a child is enrolled in a private institution.

(3) The attendance officer shall, at the discretion of the county superintendent, accompany and/or assist the county superintendent in the county in determining whether the non-public school is providing the basic instructional program as prescribed. (History: Sec. 20-2-121, MCA; IMP, Sec. 20-5-101, MCA, 20-4-102, MCA; NEW, 1981 MAR p. 1892, Eff. 1/1/82.)

10.65.303 PROCEDURES FOR COUNTY SUPERINTENDENT (1) The county superintendent as an elected local school official must meet certain teaching and administrative qualifications in school matters. The county superintendent has general supervision of the schools of his county and is responsible to perform any duty prescribed by the board of public education.

(2) The office of public instruction will provide technical assistance to all county superintendents, upon their request, so they in turn can perform the mandates of this policy.