

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on January 17, 2005 at
9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: HB 169, HB 259, 1/10/2005
Executive Action: None

HEARING ON HB 259

REP. CHRISTINE KAUFMANN, HD 81, HELENA

Opening Statement by Sponsor:

REP. CHRISTINE KAUFMANN (D), HD 81, opened the hearing on **HB 259**, Authorize civil unions for unmarried couples.

REP. KAUFMANN stated to the committee, "The people of Montana spoke resoundingly of whether same sex couples should be allowed to marry and they said, "No." Further, she stated, "The people were motivated by fear and a lack of understanding about the lives of their gay and lesbian constituents." Her testimony continued with references to children coming home and asking their parents to accept their same sex partner; and that child will have to go through much expense and legal hoops in order to gain a small measure of protection for their families and assets.

REP. KAUFMANN explained the different sections of the bill to the committee members.

EXHIBIT (juh12a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 138}

Proponents' Testimony:

"**Starshine**," **self**, rose in support of HB 259. She stated to the committee that the pledge of allegiance ends, "...with justice for all." **Starshine** stated she had been with her partner for 12 years.

{Tape: 1; Side: A; Approx. Time Counter: 138 - 152}

REP. CAROL JUNEAU, HD 16, rose in support of HB 259.

{Tape: 1; Side: A; Approx. Time Counter: 152 - 160}

Jan Donaldson, self, spoke in favor of HB 259. She informed the committee that she and her partner, Mary Ann Guggenheim had been together 20 years, and that they are a family in every sense of the word.

EXHIBIT (juh12a02)

{Tape: 1; Side: A; Approx. Time Counter: 160 - 176}

Colleen Murphy, National Association of Social Workers, testified with her son, Logan, eight years old. Her association has adopted a position that same gender sexual orientation should be afforded the same respect as any other orientation.

{Tape: 1; Side: A; Approx. Time Counter: 176 - 207}

Karl Olson, PRIDE, rose in support of HB 259. **Mr. Olson** welcomed former Rep. Jeff Lazloffy and stated that Rep. Lazloffy and he had a serious debate over marriage last fall resulting in a moment of jocularly with Mr. Olson asking Mr. Lazloffy to marry him. **Mr. Olson** stated that civil unions are a defining issue for our time. He further stated that President Bush stated recently, when he was asked the question, "...if gay and lesbian families should be afforded the protections and privileges of civil unions, President Bush said, 'Of course'."

{Tape: 1; Side: A; Approx. Time Counter: 207 - 247}

Terry Kendrick, Montana Human Rights Network, rose in support of HB 259. **Ms. Kendrick** referred to former Sen. Lee Metcalf as someone who stood up for something that was right even though it was not popular.

{Tape: 1; Side: A; Approx. Time Counter: 247 - 277}

Linda Gryczan, self, stated to the committee members that she has shared a home with another woman for more than 21 years and legally they are strangers. She further stated that nothing in Montana law acknowledges their union. **Ms. Gryczan** continued to inform the committee members about the rights that are not given to them but given others regarding legal documents, financial documents and even just being able to care for their partner while they may be in the hospital.

EXHIBIT (juh12a03)

{Tape: 1; Side: A; Approx. Time Counter: 277 - 304}

Mary Ann Guggenheim, physician, former legislator, rose in support of HB 259. She stated that this bill is about fairness and equity.

{Tape: 1; Side: A; Approx. Time Counter: 304 - 3.}}

Mary Stranahan, physician, rose in support of HB 259.

{Tape: 1; Side: A; Approx. Time Counter: 315 - 320}

Paul Johnson, self, spoke to the committee about Matthew Shepard's murder in Wyoming and how Mr. Shepard, while in the hospital, would not have been able to have his partner care for him, as his partner had no rights to have a say in his medical care.

{Tape: 1; Side: A; Approx. Time Counter: 320 - 353}

Charles and Georgia Walter, self, rose in support of HB 259, "...for the fairness of all Montanans."

{Tape: 1; Side: A; Approx. Time Counter: 353 - 377}

Brenda Wahler, self, stated to the committee that her daughter is gay and that her daughter should be given the same rights as all couples.

{Tape: 1; Side: A; Approx. Time Counter: 377 - 391}

Rick Wagner, self, rose in support of HB 259.

{Tape: 1; Side: A; Approx. Time Counter: 391 - 404}

John Lewis, self, stated that he is a retired clergyman; however, this is not a religious gathering, it is a civil gathering. He explained that he has performed hundreds of civil unions because every marriage had no benefit of law until he signed the license. His son cannot live in the State of Montana for fear of discrimination and harm.

{Tape: 1; Side: A; Approx. Time Counter: 404 - 471}

Diane Sands, former legislator, rose in support of HB 259. She informed the committee that she has been with her partner, Anne Marie Dussault for 14 years who is also a former legislator and House Majority Leader. **Ms. Sands** stated to the committee members that there are so many day to day things that people don't think about that are affected by the inability to have a civil union. Some of the problems are: power of attorney and verifying that the union is recognized by medical facilities and home insurance.

{Tape: 1; Side: A; Approx. Time Counter: 471 - 500}

Jay Cox, self, submitted to the committee his personal story of 25 years of self-loathing, \$10,000 worth of reparative mental therapy (including electric shock therapy) and his family telling him "...you are no longer ours." He asked the committee members to pass HB 259.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 11}

Claudia Montagne, self, rose in support of HB 259. She stated this bill is about fairness, equal rights and protections for all.

{Tape: 1; Side: B; Approx. Time Counter: 11 - 25}

Anita Rossman, Montana Advocacy Program, rose in support of HB 259. **Ms. Rossman** stated that people with disabilities will benefit from this bill.

{Tape: 1; Side: B; Approx. Time Counter: 25 - 34}

Gary Stallings, self, rose in support of HB 259.

{Tape: 1; Side: B; Approx. Time Counter: 34 - 45}

Brad Martin, Montana Democratic Party, rose in support of HB 259; he stated that this bill is about human dignity.

{Tape: 1; Side: B; Approx. Time Counter: 45 - 65}

Bernadette Kneefe, Clinician, stated to committee members that she works with developmentally disabled kids and these children do question their own sexuality and have no one to turn to. This bill will send a message to these kids.

{Tape: 1; Side: B; Approx. Time Counter: 65 - 96}

Betty Kijewski, self, Montana Human Rights Network, stated to the committee that her family has many friends who are gay and lesbian and how they are just like everyone else. Her friends pay taxes, vote, take out the garbage, but they do not have certain rights.

{Tape: 1; Side: B; Approx. Time Counter: 96 - 121}

Melissa Kwasne, Carroll College and University of Montana professor, writer, rose in support of HB 259.

{Tape: 1; Side: B; Approx. Time Counter: 121 - 137}

"Mija," Montana Youth Queer Coalition, stated to the committee that many homosexuals are treated as second-class citizens.

{Tape: 1; Side: B; Approx. Time Counter: 137 - 145}

Thomas Gocksch, self, stated to committee members that what CI-96 did was to protect the sanctity of marriage. He also spoke about the argument that unions/marriages are to have children.

{Tape: 1; Side: B; Approx. Time Counter: 145 - 191}

Joy Lewis, self, stated to the committee that this is a "no-brainer." This bill is about equal rights. She supported HB 259.

{Tape: 1; Side: B; Approx. Time Counter: 191 - 209}

Dawn Hayden, self, rose in support of HB 259 and stated that this is about equality and equity and further, that all should be respected.

{Tape: 1; Side: B; Approx. Time Counter: 209 - 232}

Opponents' Testimony:

Jeff Lazloffy, Montana Family Foundation, author; CI-96, referred committee members to Page 2, Lines 5-7 and stated that this is the essence of the bill. He stated that Montanans passed CI-96 by approximately 67% to define marriage as between a man and a woman.

Mr. Lazloffy stated, "...his view of marriage is shared by the vast majority of this state with the passage of CI-96." He asked the committee, "...to not play semantic games with the people of this state; they have said they don't want to redefine marriage, and civil unions are a gimmick to do just that."

[EXHIBIT\(juh12a04\)](#)

[EXHIBIT\(juh12a05\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 232 - 292}

Dallas Erickson, Montana Citizens for Decency Through Law, rose in opposition of HB 259. This bill is a "slap in the face" to many Montanans who voted for CI-96. He further spoke about what marriage is; i.e., procreation. **Mr. Erickson** stated that if this romantic vision of what marriage or love is were adopted, people would be allowed to marry their daughters, sons or dogs because they "love" them also. He stated, "...what the sponsors of this bill and their supporters want is gay marriage; don't fool us, you want gay marriages."

[EXHIBIT\(juh12a06\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 292 - 375}

Esther Fishbaugh, self, stated that this issue is not about the acceptance of individuals.

[EXHIBIT\(juh12a07\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 375 - 414}

Gilda Clancy, Montana Eagle Forum, stated to committee members that homosexuals want special rights, the same as bigamists and polygamists. Ms. Clancy rose in opposition to HB 259.

{Tape: 1; Side: B; Approx. Time Counter: 414 - 471}

Julie Milam, Montana Family Coalition, rose in opposition to HB 259 and spoke to committee members about the gay-rights movement in Chicago.

[EXHIBIT\(juh12a08\)](#)

{Tape: 1; Side: B; Approx. Time Counter: 471 - 500}

Patty Kanduch, Concerned Women of America, rose in opposition to HB 259.

[EXHIBIT\(juh12a09\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 0 - 15}

Jeanette Zengraf, Concerned Women of America, rose in opposition to HB 259. She stated that Jesus has defined marriage and has "...told us what to do and do you want a small group of people screaming out and telling us what to do?" **Ms. Zengraf** stated that "it" is an agenda to minimize marriage.

{Tape: 2; Side: A; Approx. Time Counter: 15 - 50}

Peter Merkus, self, rose in opposition to HB 259. **Mr. Merkus** stated, "...that God has spoken and you can legislate all you want, but God has spoken on this issue of homosexuality and if you bless this, you people will pay a penalty for this."

{Tape: 2; Side: A; Approx. Time Counter: 50 - 82}

Gloria Hardin, self, rose in opposition to HB 259. She stated that the gays and lesbian educational networks in Montana already have a comprehensive sex education curriculum to go into every school system to force them (students) into compliance.

Ms. Hardin also expressed her concerns about HB 259, that it will encourage more gay people. She believes that gay people can change their lifestyle and become heterosexual.

EXHIBIT(juh12a10)

{Tape: 2; Side: A; Approx. Time Counter: 82 - 152}

Venice Coates, self, rose in opposition to HB 259. She stated that she is offended that people are trying to destroy the sanctity of marriage.

{Tape: 2; Side: A; Approx. Time Counter: 152 - 199}

Ken Milburn, self, rose in opposition to HB 259. He stated to the committee that this change will damage our nation and asked the question, "...where does it end?"

{Tape: 2; Side: A; Approx. Time Counter: 199 - 225}

Eugene Williams, self, rose in opposition to HB 259. He stated to the committee that the goal of the homosexual's agenda is to put them on same level as heterosexuals.

EXHIBIT(juh12a11)

{Tape: 2; Side: A; Approx. Time Counter: 225 - 279}

Tony Hochim, Pastor-Southhills Baptist Fellowship Church, stood opposed to HB 259. He also stated that they do not support the Baptist church that is coming to Helena.

EXHIBIT(juh12a12)

{Tape: 2; Side: A; Approx. Time Counter: 279 - 292}

Merry Nelson, self, rose in opposition to HB 259. She stated that based on scientific research, "...homosexuality is an abomination and is a sin that will not go unpunished."

{Tape: 2; Side: A; Approx. Time Counter: 292 - 330}

Anne Plowman, self, rose in opposition to HB 259.

{Tape: 2; Side: A; Approx. Time Counter: 330 - 334}

Eric Scheidermayer, Montana Catholic Conference, rose in opposition to HB 259.

[EXHIBIT\(juh12a13\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 334 - 346}

NOTE: Each Proponent and Opponent had been give 40 minutes of testimony. The Opponents ran out of time and were asked by Chairman Rice to just say their name for the record. 30 Opponents responded.

[EXHIBIT\(juh12a14\)](#)

[EXHIBIT\(juh12a15\)](#)

{Tape: 2; Side: A; Approx. Time Counter: 346 - 500}

{Tape: 2; Side: B; Approx. Time Counter: 0 - 12}

Informational Testimony:

Nancy Sweeney, Montana Association of Clerks of Court, rose as an informational witness. The concern of the association is the ease of administration of the bill. Ms. Sweeney submitted amendments that the association would like to have considered by the committee.

[EXHIBIT\(juh12a16\)](#)

{Tape: 2; Side: B; Approx. Time Counter: 12 - 35}

Questions from Committee Members and Responses:

REP. KOOPMAN asked any of the proponents if there is a specific quote made by Martin Luther King about homosexual unions. **Mr. Olson** responded that Martin Luther's widow, Coretta Scott King, is considered the keeper of his legacy and she has said "...that gay and lesbian people should be welcomed at the table of citizenship."

REP. EVERETT and **REP. BECKER** asked about the provision in law that if a civil union is performed by unlawful person, if the civil union would be valid and also, and asked, "What about a marriage that is performed?" **Ms. Sweeney** responded that in marriages, if the people joined by marriage believe they have been married, they are. In further questioning by **REP. BECKER**, the issue of increased insurance costs was raised; however, no one responded to that question.

REP. GUTSCHE inquired of **REP. KAUFMANN** if this bill would require any church to sanctify the civil unions; **REP. KAUFMANN** responded by saying that especially the clergy would not be allowed to perform civil unions.

REP. HARRIS and Mr. Lazloffy discussed Section 4: List of Benefits and if Mr. Lazloffy and his group would be comfortable with any of the benefits listed be allowed in civil union. **Mr. Lazloffy** responded that there is nothing in this bill that is acceptable.

REP. CLARK continued the questioning of **REP. KAUFMANN** with regard to the power of attorney and the ease in obtaining legal documents whereby partners are able to address concerns as to medical care, wills, assets, etc. **REP. KAUFMANN** informed the committee members about how difficult, time consuming and sometimes expensive it is to accomplish these legal matters. The two representatives continued their question and answer session about the "gay agenda" being promoted in schools and a different term for civil unions such as "memorandums of understanding."

REP. MCGILLVRAY posed to **REP. KAUFMANN** the theory that in the 6,700 deaths of gay men, that the life expectancy was age 42. Therefore, "...why would you bring a bill that would decrease the life expectancy of males by 33 years; would that not be destructive to the health of the male gender?" **REP. KAUFMANN** disputed the validity of that study. **REP. MCGILLVRAY** continued with the questioning of **REP. KAUFMANN** by asking that if this bill passes, if there would be a guarantee that this bill will not legitimize polygamy in Montana. She replied that this bill is about two people only.

{Tape: 2; Side: B; Approx. Time Counter: 35 - 370}

Closing by Sponsor:

REP. KAUFMANN closed the hearing on HB 259 by stating, "...this bill is not about undermining Western Civilization." She continued with an explanation to the committee members about what this bill is and finally said that this bill is about fairness.

{Tape: 2; Side: B; Approx. Time Counter: 370 - 500}

HEARING ON HB 169

REP. DAVE MCALPIN, HD 94, MISSOULA

Opening Statement by Sponsor:

REP. DAVE MCALPIN (D), HD 94, opened the hearing on **HB 169,** Revise statutes related to tobacco master settlement agreement.

In his statement to the committee, **REP. MCALPIN** stated that the State of Montana receives approximately \$25M annually in

perpetuity from various participating manufacturers. There are also nonparticipating manufacturers and it is the State of Montana's obligation under the master settlement agreement to enforce those manufacturers participation in the agreement.

The 2003 Legislature passed legislation that accomplished many of the provisions; however, there are three additional things that need to be clarified. They are: 1) "roll your own" tobacco, 2) cost recovery, 3) tightening the reporting requirement for wholesalers.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 61}

Proponents' Testimony:

Chris Tweeten, Chief Civil Counsel, Attorney General, rose in support of HB 169. He spoke to the committee about the master settlement agreement; how to diligently enforce the laws regarding that settlement and the clarification needed for nonparticipating members regarding enforcement.

[EXHIBIT\(juh12a17\)](#)

[EXHIBIT\(juh12a18\)](#)

[EXHIBIT\(juh12a19\)](#)

[EXHIBIT\(juh12a20\)](#)

{Tape: 3; Side: A; Approx. Time Counter: 61 - 191}

Pat Melby, Montana Medical Association, rose in support of HB 169. **Mr. Melby** requested the committee members to adopt the technical amendments and pass HB 169.

{Tape: 3; Side: A; Approx. Time Counter: 191 - 199}

Mark Staples, Montana Wholesalers Association, spoke in support of HB 169.

{Tape: 3; Side: A; Approx. Time Counter: 199 - 234}

Jim Ahrens, Montana Hospital Association, Alliance for a Healthy Montana, rose in support of HB 169.

Jani McCall, Deaconess Billings Clinic, Montana Children's Initiative Provider Association, American Diabetes Association, rose in support of HB 169.

{Tape: 3; Side: A; Approx. Time Counter: 234 - 263}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Reps. Everett, Stoker, Harris, Koopman asked numerous questions of Mr. Tweeten. Among the questions posed were involving the Indian reservations; and whether they are exempt from the taxes and settlement issues, the cigarettes that leave the reservation and nonmember purchasing cigarettes on the reservation.

REP. HARRIS asked specifically of Mr. Tweeten if the payments will go on in perpetuity. **Mr. Tweeten** replied, "Yes" to that question. In follow-up questioning Mr. Tweeten was asked the difference between nonparticipating manufacturers (NPM) and participating manufacturers regarding the money that is placed in the 25 year escrow accounts. **Mr. Tweeten** replied, "...the money from the NPM never comes to the State of Montana unless we sue for it." **REP. HARRIS** posed questions to Mr. Tweeten about the black-market, the Internet and the absence of the tax stamp on packages of cigarettes.

REP. KOOPMAN continued to inquire of Mr. Tweeten about the black-market, NPMs and the requirement of tax stamps on packages of cigarettes. **Mr. Tweeten** explained to the committee how a manufacturer is required to join the settlement agreement; the fact being that only four manufacturers are non participatory. **Mr. Tweeten** did refer some questions to Kelly O'Sullivan from the Attorney Generals Office regarding the taxing of cigarettes on the Indian reservations.

{Tape: 3; Side: A; Approx. Time Counter: 263 - 500}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 54}

Closing by Sponsor:

REP. MCALPIN closed the hearing on HB 169.

{Tape: 3; Side: B; Approx. Time Counter: 54 - 70}

PLEASE NOTE IN REFERENCE TO: HB 259

ADDITIONAL EXHIBITS 21-27 WERE HANDED IN UPON ADJOURNMENT OF THE MEETING.

[EXHIBIT \(juh12a21\)](#)

[EXHIBIT \(juh12a22\)](#)

[EXHIBIT \(juh12a23\)](#)

[EXHIBIT \(juh12a24\)](#)

[EXHIBIT \(juh12a25\)](#)

[EXHIBIT \(juh12a26\)](#)

[EXHIBIT \(juh12a27\)](#)

**ADDITIONAL WITNESS STATEMENTS 1-21 PROPONENT WERE HANDED IN UPON
ADJOURNMENT OF THE MEETING.**

**ADDITIONAL WITNESS STATEMENTS 1-37 OPPONENTS WERE HANDED IN UPON
ADJOURNMENT OF THE MEETING.**

ADJOURNMENT

Adjournment: 12:00 P.M.

REP. DIANE RICE, Chairman

PAM SCHINDLER, Secretary

DR/ps

Additional Exhibits:

EXHIBIT ([juh12aad0.PDF](#))