

**TESTIMONY IN SUPPORT OF SB 108**  
**Dave Cogley, General Building Contractor**  
**Wildwood Log Homes**  
**March 10, 2005**

Mister Chairman, members of the committee, my name is Dave Cogley. I am a general building contractor, working locally here in the Helena area since 1978. I have always operated as a sole proprietor and have chosen to carry general health insurance on myself and my family, which as opposed to workers compensation insurance applies 24 hours a day for all illnesses and injuries. I don't feel as a practical matter that I need to also carry the more limited workers compensation insurance on myself, and therefore have utilized the independent contractor (IC) exemption the law provides since I began my business. I feel very strongly that as a business person I should have the right to determine how I cover myself, and not be forced into a system designed to protect employees as opposed to self-employed persons. Both types of insurance are too expensive to be considered casually.

But the statutory IC exemption process has always been wrought with questions and misunderstanding as to who is a legitimate independent contractor. Before 1983 a person's status as an IC was determined after an injury occurred. In order to provide more certainty for the parties as to where the liability for any potential work injury would lay, a certification process was adopted by the legislature that year to predetermine IC status. The statute stated that the certificate, once issued by the Department of Labor and Industry, would be conclusive and would bar any subsequent claims by the certificate holder for workers compensation. However, due to a screening process that became increasingly lax and also to a lack of education of the industry and the public regarding the exemption, problems persisted with knowing who was a legitimate independent contractor and what were the responsibilities of each party. Because of abuses and ongoing concerns with the IC process, particularly in the construction industry, legislation was introduced in both 1991 and 1993 to eliminate the exemption for workers in that industry, and make work comp coverage mandatory. That legislation failed then, but as we discussed in the advisory committee, if the status of an IC relationship cannot be established conclusively at the time of engaging the IC to perform work, then mandatory coverage may be the only answer. Some groups are requiring this now as a result of the Wild decision.

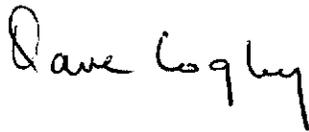
I believe SB 108 addresses the concerns expressed by the court with the present certification process, by beefing up the screening, enforcement, and audit authority of the department and providing for a meaningful process. It will not be difficult for anyone who is truly operating independently to obtain certification. This legislation also provides for an education component wherein independent contractors and those engaging independent contractors will better understand the responsibilities of each in entering into and maintaining that relationship. It defines penalties that can be used to encourage compliance and discourage fraud. It also addresses the concern expressed by

the court as to how this exemption fits with the general policy statement of the workers compensation act and the non-waiver provisions of that act.

Some may object to the increased authority of the department under this bill, and the increased cost of the program. The committee was very mindful of these concerns, and fashioned the process to be as simple as possible but yet be effective. I feel the benefits of having a conclusive certification process fully justify the extra cost and regulation. Further, if the alternative is mandatory coverage, then the cost is cheap by comparison.

I urge the committee to act favorably on SB 108. Thank you.

Dave Cogley

A handwritten signature in cursive script that reads "Dave Cogley". The signature is written in dark ink and is positioned below the typed name.