

TESTIMONY IN FAVOR OF SB 108
Before the Senate Business and Labor Committee
Jerry Keck, Administrator
Employment Relations Division
Department of Labor and Industry
January 11, 2005

Madam Chair, members of the committee, for your record my name is Jerry Keck. I am the administrator of the Employment Relations Division in the Department of Labor and Industry. I was the Department representative appointed the SB 270 Advisory Committee charged with studying issues related to independent contractors.

As part of the Advisory Committee deliberation, the Department commissioned a Best Practices study that was done by the Hayes Company from Minneapolis, a national workers' compensation consulting firm. That study revealed that Montana has a higher percentage of independent contractors than any other state that has a registration process. Montana currently has over 33,000 independent contractors. This is 8% of our workforce. Florida has the next highest percentage with only 2%. The Best Practices study concluded that one of the reasons for this high percentage in Montana was the easy process for obtaining the independent contractor exception that makes fraud or misuse of the system possible.

The Advisory Committee spent the first two meetings identifying the problem areas and issues related to independent contractors and identifying possible solutions to those issues. Ultimately the Committee agreed upon a set of general principles for guiding the changes needed to restore certainty and fairness to the independent contractor statutes.

1. Maintain the exemption in the law for Independent Contractors from the Workers' Compensation Act.
2. Keep the exemption certificate process, but provide the Department of Labor and Industry screening, enforcement and audit authority.
3. Provide for education of Independent Contractors and employers to clearly understand "free from direction and control". Encourage use of a Memorandum of Agreement (contract) to define the relationship.
4. Make the exemption certificate conclusive as to Independent Contractor status.
5. Increase the fee for the Independent Contractor Exemption certificate to fund the increased screening, enforcement and audit activities.
6. Define penalties that can be used as an enforcement tool to encourage compliance and discourage fraud.

The Advisory Committee then agreed upon an application process and enforcement plan that implements the general principles. The key components of the application and enforcement plan include:

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1. Screening of new applications to verify documentation to support Independent Contractor status.
2. A comprehensive educational program aimed at employers, hiring agents and Independent Contractors focused on 'independent business' and 'control' tests.
3. On-site audits to verify that the 'independent business' and 'control' standards are being met in practice.
4. Authority to revoke or suspend Independent Contractor exemptions when violations of the statute are found.
5. Review of renewal applications to verify documentation to support continued Independent Contractor status.

Madam Chair, members of the committee, SB 108 contains the general principles and key elements of an application and enforcement plan to implement the consensus agreement of the Advisory Committee. I would be happy to answer any questions that you might have.