

TESTIMONY IN FAVOR OF SB 108
Before the Senate Business and Labor Committee
Dave Cogley, Building Contractor
Wildwood Log Homes
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Madame Chair, members of the committee, my name is Dave Cogley. I am a building contractor in the Helena area. I operate as a sole proprietor and have utilized the independent contractor exemption since I began building in 1978. I have held the IC certificate since the IC certification law was passed in 1983. I served on the SB 270 Advisory Committee Jerry Keck referred to, and I support the report of that committee and this legislation which was produced by that committee.

As you know, the workers compensation act requires me, as a self-employed person offering contracted services, to either purchase work comp insurance on myself or obtain the IC exemption. This exemption is strictly a personal exemption for me, and does not affect my obligation as an employer to provide workers compensation coverage for any employees I may have. The exemption is important to me not only because the insurance is expensive, but the medical coverage portion adds nothing to the coverage I already have under my general health insurance policy, which provides work-related medical protection as well as much broader medical protection. But because they are separate lines of insurance no adjustment of premium is possible on either policy simply because I also have the other. Also as an independent business person I feel strongly that I should have the right to determine what protection I want to afford for myself personally in the operation of my business, and not be forced into a system of insurance which in my opinion does not fit my situation.

Prior to 1983 a person's status as an independent contractor exempt from the act was a factual determination made after an injury was sustained and a claim was made. In order to provide more certainty for the parties as to where the liability for any potential work injury would lay, an IC certification process was adopted in 1983 which provided a predetermination of IC status. The statute stated that the certificate, once issued, was to be conclusive and would bar any subsequent claims by the certificate holder for workers compensation. Under this process the Department of Labor and Industry screened applicants for the IC exemption and issued certificates for those meeting the statutory definition of independent contractor. However, over time the screening process became somewhat of a rubber stamp process with little oversight or enforcement. Perhaps more importantly, there was very little education of the industry or the public as to the process or its purposes. 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 independent contract relationship cannot be established conclusively at the time of engaging the IC to perform work, then the only feasible alternative may be mandatory workers comp coverage for everyone. Some industry groups are already

requiring this as a result of the Wild decision. I would hate to see us go there as a matter of state policy.

I believe SB 108 addresses the concerns rightly expressed by the court with the IC 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. The 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 personally feel the benefits of having a conclusive certification process fully justify any extra cost and burden. Further, if the alternative is mandatory coverage, then the cost is cheap by comparison.

I would therefore urge the committee to act favorably on SB 108. Thank you for your consideration.

Dave Longley