

Amendments to Senate Bill No. 108  
1st Reading Copy

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo  
January 20, 2005 (8:27am)

1. Title, page 1, line 16.

**Following:** "SECTIONS"

**Strike:** "15-30-201,"

2. Page 1, line 22.

**Following:** "contractor"

**Insert:** "and that an employer has an obligation to determine whether an individual is treated as an independent contractor or as an employee"

3. Page 1, line 24.

**Following:** "an employer"

**Insert:** "to coerce a worker to work as an independent contractor by offering"

4. Page 1, line 26 through line 27.

**Following:** "decision" on line 26

**Strike:** "identified" through "entity" on line 27

**Insert:** "affirmed the twin determinants of independent contractor status as being "A" issues of control and "B" whether the individual is in an independent business, commonly known as the "A-B" test, and emphasized the necessity of both factors being present, with performing work for other persons being an indication of an independent business"

5. Page 1.

**Following:** line 27

**Insert:** "WHEREAS, the concurring opinion in the Wild decision further suggested that the Department of Labor and Industry strengthen the certification process to provide a conclusive determination of independent contractor status; and"

6. Page 1, line 29.

**Following:** "community"

**Insert:** ", with employers and independent contractors coming together to propose a consensus solution after participating in a study required by Senate Bill 270, passed by the 58th

Legislature"

7. Page 2, line 9.

**Following:** "regularly"

**Insert:** "and customarily"

8. Page 2, line 11.

**Following:** "certificate"

**Insert:** "unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3"

9. Page 2, line 22.

**Following:** "(4)"

**Insert:** "(a)"

10. Page 2, line 24.

**Strike:** "(a)"

**Insert:** "(i)"

11. Page 2, line 26.

**Strike:** "(b)"

**Insert:** "(ii)"

12. Page 2.

**Following:** line 27

**Insert:** "(b) For the purposes of subsection (4)(a)(i), an endorsement required for licensure, as provided in 37-47-303, does not imply or constitute control."

13. Page 3, line 7.

**Following:** "(7)(a)"

**Strike:** "A conclusive" on line 7 through "certificate" on line 8.

**Insert:** "When the department approves an application for an independent contractor exemption certificate and the person is working under the independent contractor exemption certificate, the person's status is conclusively presumed to be that of an independent contractor"

14. Page 3, line 9.

**Following:** "(b)"  
**Strike:** "If both" through "that the"  
**Insert:** "A"

15. Page 3, line 11.  
**Following:** "Montana"  
**Strike:** ", precluding the person"  
**Insert:** "and is precluded"

16. Page 3, line 12.  
**Following:** "elected"  
**Strike:** "coverage" through "39-71-401(3)"  
**Insert:** "to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3"

17. Page 3.  
**Following:** line 12  
**Insert:** "(c) For the purposes of the Workers' Compensation Act and the Occupational Disease Act of Montana, a person is working under an independent contractor exemption certificate if:  
(i) the person is performing work in the trade, business, occupation, or profession listed on the person's independent contractor exemption certificate; and  
(ii) the hiring agent and the person holding the independent contractor exemption certificate do not have a written or an oral agreement that the independent contractor exemption certificate holder's status with respect to that hiring agent is that of an employee."

18. Page 4, line 12.  
**Following:** "first"  
**Insert:** ": (i)"

19. Page 4, line 13.  
**Following:** "certificate"  
**Insert:** "unless the individual is not required to obtain an independent contractor exemption certificate pursuant to [section 1(1)(a)]"  
**Following:** " ; "  
**Insert:** "or"

20. Page 4.  
**Following:** line 13  
**Insert:** "(ii) electing to be bound personally and individually by

the provisions of compensation plan No. 1, 2, or 3;"

21. Page 5, line 3 through page 7, line 13.

**Strike:** Section 4 in its entirety.

**Renumber:** subsequent sections

22. Page 17, line 19.

**Following:** "certificate"

**Strike:** "may waive"

**Insert:** "waives"

23. Page 17, line 20.

**Following:** "72"

**Insert:** ", unless the person has elected to be bound personally  
and individually by the provisions of compensation plan No.  
1, 2, or 3"

24. Page 22, line 12.

**Following:** "regularly"

**Insert:** "and customarily"

25. Page 24, line 12.

**Following:** "is an"

**Strike:** "exemption"

**Insert:** "exception"

- END -