



SENATE STANDING COMMITTEE REPORT

January 20, 2005

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Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** recommend that **Senate Bill 183** (first reading copy -- white) **do pass as amended.**

Signed: _____

Vicki Cocchiarella
Senator Vicki Cocchiarella, Chair

And, that such amendments read:

1. Page 6, line 9 through line 10.

Following: "salesperson." on line 9

Strike: "Additional" on line 9 through "activities." on line 10

2. Page 6.

Following: line 10

Insert: "(9) When a broker or salesperson is acting only as a property manager, another relationship disclosure is not required and a disclosure that complies with subsection (8) must be construed as a sufficient disclosure of the contractual relationship."

Renumber: subsequent subsections

3. Page 6, line 20.

Following: "transaction"

Strike: "or to" through "owners"

- END -

Committee Vote:

Yes 11, No 0.

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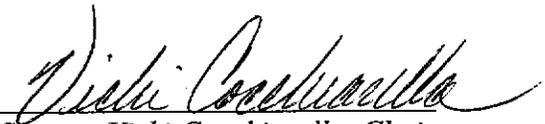
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Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** recommend that **Senate Bill 108** (first reading copy -- white) **do pass as amended.**

Signed:


Senator Vicki Cocchiarella, Chair

And, that such amendments read:

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"

Committee Vote:

Yes 11, No 0.

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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"



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Mr. President:

We, your committee on **Business, Labor, and Economic Affairs** recommend that **Senate Bill 188** (first reading copy -- white) **do pass as amended.**

Signed:


Senator Vicki Cocchiarella, Chair

And, that such amendments read:

1. Page 7, line 1.

Following: "of the"

Strike: "state of Montana"

Insert: "department, of a plan 1, 2, or 3 insurer,"

- END -

Committee Vote:

Yes 11, No 0.

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PROXY VOTE

I, the undersigned, hereby authorize Senator Carbunell to

vote my proxy on any issue before the Senate Bar. Labor Rec.

Committee held on 1/27/05, 2005.

Yes on SB 188

Carlynn Aguirre
SENATOR

STATE OF MONTANA

Sen Grimes on SB 188
motion passed unam.

PROXY VOTE

I, the undersigned, hereby authorize Senator CSMR to

vote my proxy on any issue before the Senate SB 188

Committee held on January 20, 2005.

[Handwritten initials]

[Handwritten signature]

SENATOR
STATE OF MONTANA

