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2-21-05
SB 475 + SB 476

SB 475-SB 476
Revisions to Definition of
The Practice of Law and the Unlicensed Practice of Law

SB 476 and SB 475 are proposed to amend (respectively) two sections of Chapter 61 of the Montana Professions and Occupations Code, to wit SB 476 would amend 37-61-201 "Who may be considered to be practicing law" and SB 475 would amend 37-61-210 "Penalty for practicing without a license" expressly to exclude certain professions where these tangentially touch upon legal issues. SB 476 particularly focuses upon allowing marital and divorce counselors and mediators to prepare written separation agreements.

These two closely related proposals are coordinated to achieve the following ends:

(1) Private persons with specialized experience and knowledge in certain fields already do, may, and must be allowed to continue to provide professional advice without fear of prosecution for the unauthorized practice of law.

(2) Anyone who pretends to be a lawyer---in the sense of a legal representative authorized by another to appear in Court, who is NOT a licensed attorney will still be found guilty of fraud as well as being subject to an automatic presumption of guilt for contempt of court.

(3) The integrity of the legal profession, and the right to claim the name or occupational title or status of an attorney, shall continue to be restricted to those who are licensed by the state.

(4) These bills recognize the modern historical and legal realities that the consumer of such standardized professional services as property transfers in real estate transactions, the organization or set up of small business entities such as partnerships or corporations, and the preparation of wills and divorce or separation agreements are acts which can be done competently by other professionals.

(5) Of course, people involved in divorces with property and those involved in the formation or dissolution of business entities still have the option of employing licensed attorneys, but the consumer will benefit by allowing the provision of services by other professionals.

(6) These bills reflect the additional practical reality that an attorney's education and license is not always required for simple transactions in everyday life and provides little or no practical background for the resolution of everyday business and personal affairs.

(7) The integrity of the field of law is thus enhanced, as it is preserved for more sophisticated and elaborate practice, but the false pretense that every formal document bearing the title "Contract", "Divorce/Separation Agreement" or "Last Will & Testament" requires 3 years of formal training in law school regarding Constitutional History & Jurisprudence, the Federal and State Rules of Civil and Criminal Procedure, and abstruse exercises on the Rules of Perpetuities in the 17th and 18th

centuries or Mutual Mistakes in Contracts involving the sale of pregnant cattle, will be eliminated[1].

(8) These two bills remove the threat and stigma of criminal contempt penalties for the stockbroker, insurance adjustor, consultant, or accountant.

(9) The recognition of the nature, scope, and value of the services provided by appraisers, bankers, certified public accountants, counselors, financial consultants, insurance adjusters and salesman, land surveyors, mediators, psychiatrists, psychologists, real estate brokers, social workers, and stockbrokers, around Montana and elsewhere, would improve public perception of the honesty and integrity of lawyers---and focus public attention on the value of legal specialists in those areas where the legal complexity of the issues involved actually requires long-term education and vocational apprenticeship.

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[1] The sponsors and proponents of this bill challenge any licensed attorney inside or outside of government to deny that the study of the "Rule Against Perpetuities" occupies a position in First Year Property Courses on the one hand, and the property sections of the Multi-State Bar Exam on the other, far out of proportion to the virtually NIL probability that any practitioner today will EVER encounter a genuine perpetuities problem in the modern world (or even the recent historical world). Likewise, while the story of the pregnant cow, "Rose II of Abalone" is a law school and bar exam legend of sorts, the understanding of this classic case of "mutual mistake" is not required or even helpful---but is rather a lawyers' "rite of passage" with no genuine purpose in preparing practitioners to draft modern real-estate sales or corporate acquisitions and mergers.... Likewise, for better or for worse, the precepts of *Marbury v. Madison*, *McCulloch v. Maryland* and/or the relationship between *Scott v. Sanford* and the 13th, 14th, and 15th Amendments have almost no bearing on the average residential real-estate closing or mortgage application....