

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND INDUSTRY

Call to Order: By Chairman Gene Thayer, on January 20,
1989, at 10:00 a.m.

ROLL CALL

Members Present: Chairman Thayer, Vice Chairman Meyer,
Senator Noble, Senator Williams, Senator Hager, Senator
McLane, Senator Weeding, Senator Lynch.

Members Excused: Senator Boylan

Members Absent: None

Staff Present: Mary McCue, Legislative Council

Announcements/Discussion: None

HEARING ON SENATE BILL 153

Presentation and Opening Statement by Sponsor: Senator
Rasmussen, District 22, stated Senate Bill 153 dealt
with the outfitter laws. He said, the bill related to
a recent workers Compensation decision changing the
interpretation of employee or independent contractor
status.

List of Testifying Proponents and What Group They Represent:

Jack Hutchison - Fishing and Floating Outfitters
Association of Montana
Bob Butler - Butler Outfitting Co./Twin Bridges,
Montana
Paul Roos - Self/ Helena, Montana
Stan Bradshaw - Self/Helena, Montana
Tag Rittel - Montana Outfitter and Guides Association

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Jack Hutchison stated, "This bill would bring the law more
in line with the actual working situation of the

business. Guides are not permanent employees, they are hired as the need arises. Under those circumstances, guides may work for a number of employers each year." (See Exhibit #1).

Bob Butler amplified the previous testimony. He also pointed out that guides operated out of a pool and had their own vehicles and equipment. He said, "Guides do not fit the description of employee." (See Exhibit #2).

Paul Roos pointed out three main points of need, for fairness within the proposed legislation.

Historically, Montana float fish outfitters had used guides on an independent contract basis. When outfitters needed an occasional guide, they hired and paid the guide an agreed fee for that specific task. Roos said the felt guides have been paid as independent contractors in the past.

Secondly, a guide had to make his own operational decisions within a flexible, unmet time frame. Guides also had to provide for the expectations of each client or he would not stay in business.

His third concern was the confusion within their industry regarding regulations. The Department of Labor and Industry did not uniformly interpret or enforce rules identifying guides as employees or independent contractors. Roos said, "This legislation will enable a guide's job description to legitimately determine whether or not he or she is an employee or an independent contractor. (See Exhibit #3).

Stan Bradshaw said he worked as a guide for a variety of outfitters. He stated, his work style was as Roos had described. Bradshaw also stated he owned his own equipment and was responsible for his own decisions concerning his clients.

Bradshaw submitted testimony (See Exhibit #4 - Attachment B) regarding his refusal for an exemption from Workers' Compensation as an independent Contractor. Language within Fish, Wildlife and Parks statutes described guides as employees of outfitters. The Workers' Compensation policy was to use this language, and therefore, classified a guide as an employee.

He said it was not the intent of SB 153 to characterize all guides as contractors. It simply offered an area

of recognition for those guides who proved they meet the criteria of an independent contractor. He urged support of SB 153. (See Exhibit #4).

Tag Rittel said the Montana Outfitter and Guides Association enthusiastically supported SB 153. (See Exhibit #5).

Questions From Committee Members: Mr. Roos answered Senator Williams by stating he had found no single method of withholding Workers' Compensation. He said, some employers hired guides for an extended period of time, for guiding as well as other duties. In such instances, the employee status may fit, and withholding procedures are required.

Mr. Roos told Senator Noble, the ratio paid by outfitters varied from 27% to as low as a little over 7%.

Senator Weeding wondered if some outfitter ranchers used ranch hands as guides during rainy spells and if the hands were really qualified guides.

Mr. Roos said he thought this did happen sometimes, but most guides were licensed professional people. Guides usually have their own equipment and sometimes they own their own livestock.

Mr. Roos told Senator Williams he could not document the reasons for the fluctuation of insurance rates discussed earlier.

Senator Williams wondered if the rates were uniform and the modification factor caused the variance.

Mr. Bradshaw said he had a policy in force for the past seven years, with no accidents, so he did not feel the modification factor was the cause.

Closing by Sponsor: Senator Rasmussen suggested holding the bill pending printing of the fiscal note, and information needed from the Workers' Compensation Division. With that, he said, "I close."

DISPOSITION OF SENATE BILL 153

Discussion: Executive action at a later date.

HEARING ON SENATE BILL 150

Presentation and Opening Statement by Sponsor: Senator Bishop, District 43, explained the existence of two types of power of attorney. A special power of attorney gave a person the power to act on a specific entity, while a general power of attorney gave the holder authority to transact any business the property owner could. Senator Bishop stated, individuals were using both types to avoid provisions calling for licensing of real estate brokers. (See Exhibit #6).

List of Testifying Proponents and What Group They Represent:

Martin Jacobson - Department of Commerce
Tom Hopgood - Montana Association of Realtors

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Martin Jacobson stated, "Real Estate Brokers are required to be licensed by this state, pursuant to Title 37, Chapter 51, MCA. Senate Bill 150 would amend one of the exemptions --the attorney-in-fact exemption contained in Section 37-51-103 (2), MCA.

In a real estate transaction, the owner is referred to as the principal and the attorney-in-fact as the agent acting on behalf of the principal under written authority. SB 150 has been proposed, because of the increasing use not confined to the board's interpretation of the statute-- that the exemption is limited to the single final consummation of an existing transaction and is not intended for beginning to end transactions.

Mr. Jacobson said, "The Department of Commerce was presenting an amendment to SB 150. As amended, SB 150 would continue allowing an exemption for the limited power of attorney for consummating a transaction. As amended Sb 150 would also create an exemption for a general power of attorney lawfully allowing another person to act on the owner's behalf to handle an entire transaction. However, both exemption are limited, and do not apply if used on a regular basis in conjunction with a business or for the purpose of avoiding license requirements. (See Exhibit #7).

Tom Hopgood stated the association was pleased to support

the bill with the amendments that have been proposed by the board of regulation. The association feels the problem in Montana is that people are using these powers of attorneys to sale property to other people without the benefit of being licensed as a real estate agent. He urged to do pass.

Questions From Committee Members: Senator Noble stated, "I don't understand the last part when you stated that there are real estate people that are acting as a power attorney fout of state interest that they are selling this property form as agent and they really shouldn't, because they are not licensed or don't have the authority to do that. Is that what you are trying to say?"

Tom Hopgood stated, that a person who is not a real estate agent or broker, comes in and says, "Tom, draft me up a power of attorney form that I can have people sign and that will lett me sell my property." I then draft one up, they take it, authorize the form, sales their houe and gets commission off of it just like a regular real estate agent, but not licensed or regulated by the Department of Revenue.

Martin Jacobson stated that this was not a widespread problem right now, but there are increasing inquiries to the board as to application of this exemption. There are in fact, several in the State of Montana that are using the power of attorney without real estate licenses. What the board would like to see happen is for us to be able to allow the board to require these people to have a license.

Senator Meyer stated, "Why didn't you do this another way. Why didn't you go around and redefine broker and real estate sales person and you could get at it that way? The reason I'm saying this is because there are a number of cases where you have a family member that's an older person, somehow you have to have power of attorney to dispose the property."

Closing by Sponsor: Senator Bishop closed by stating, he issued powers of attorney regularly in his law practice. Mainly, in instances such as a husband being transferred and leaving his wife authority to dispose of their property. The intent of this bill is stopping people who aren't licensed real estate agents, from consistently acting as one.

DISPOSITION OF SENATE BILL 150

Discussion: None

Amendments and Votes: Senator Williams moved the amendment.
Seconded by Senator Lynch. CARRIED. (See Exhibit #8).

Recommendation and Vote: Senator Williams moved SB 150 DO
PASS AS AMENDED. Senator Hager seconded. Motion
CARRIED.

DISPOSITION OF SENATE BILL 98

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch moved SB 98 DO PASS.
Seconded by Senator Noble. Motion CARRIED.

ADJOURNMENT

Adjournment At: 11:07 a.m.



SENATOR GENE THAYER, Chairman

GT/ct

min120ct.sr

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/20/89

Handwritten notes

51st LEGISLATIVE SESSION 1989

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DARRYL MEYER	✓		
SENATOR PAUL BOYLAN			✓
SENATOR JERRY NOBLE	✓		
SENATOR BOB WILLIAMS	✓		
SENATOR TOM HAGER	✓		
SENATOR HARRY MC LANE	✓		
SENATOR CECIL WEEDING	✓		
SENATOR JOHN "J.D." LYNCH	✓		
SENATOR GENE THAYER	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

January 20, 1929

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 150 (first reading copy -- white), respectfully report that SB 150 be amended and as so amended do pass:

1. Title, line 5.

Strike: "LIMIT"

Insert: "TO GENERALLY REVISE"

2. Page 1, line 13.

Following: ";

Insert: "and"

3. Page 1, line 18.

Following: "public"

Strike: "."

Insert: ";

4. Page 1, lines 19 through 21.

Strike: lines 19 through 21 in their entirety

Insert: "WHEREAS, the Legislature of the State of Montana finds the present attorney-in-fact exemption is limited to one based on a special power of attorney; and

WHEREAS, the Legislature of the State of Montana finds that the attorney-in-fact exemption from the requirement that a person be licensed as a real estate broker or salesman should be expanded to include a general power of attorney.

THEREFORE, the Legislature of the State of Montana finds it appropriate to expand the attorney-in-fact exemption to include one based on a general power of attorney and to limit all attorney-in-fact exemptions to occasional use under circumstances in which it is reasonably certain that adequate safeguards to the public are maintained."

5. Page 2, line 13.

Following: "under"

Strike: "the"

Insert: "a"

Following: "executed"

Insert: "special or general"

6. Page 2, lines 17 and 18.

Strike: "any owner or lessor"

Insert: "a person or persons"

7. Page 2, line 19.

Following: "consideration"

Insert: "in conjunction with a business or for the purpose of avoiding license requirements"

AND AS SO AMENDED DO PASS

*J.C.
1/21/89
7:44 A.M.*

Signed: *Gene Thayer*
Gene Thayer, Chairman

STANDING COMMITTEE REPORT

January 26, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 98 (first reading copy -- white), respectfully report that SB 98 do pass.

DO PASS

Signed: _____

Gene Thayer, Chairman

J.C.
1/21/89
7:44
P.M.

(This sheet to be used by those testifying on a bill)

EXHIBIT NO. 1
DATE 1/20/89

Witness

NAME: Jack D Hutchison BILL NO. SB153
DATE: 1/20/89

ADDRESS: P O Box 387 Sheridan MT

PHONE: 842 5868

REPRESENTING WHOM? Fishing & Hunting Outfitters Assn. of MT

APPEARING ON WHICH PROPOSAL: SB 153

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: This bill would bring the law more in
line with the actual working situation. The
bill returns to the existing law of prior to 1988

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

EXHIBIT NO. 2

DATE 1/20/89

DATE 1/20 BILL NO. SB 153

NAME: Bob Butler

ADDRESS: Box 303, Twin Bridges, MT, 59754

PHONE: 406-684-5773

REPRESENTING WHOM? BUTLER OUTFITTING CO

APPEARING ON WHICH PROPOSAL: SB 153

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT:

Guides Viewed as independant
Contractors.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a ^{SENATE BUSINESS & INDUSTRY} bill.)

EXHIBIT NO. 3

DATE 1/20/29

NAME: Paul J. Roos DATE: NO. SB153

ADDRESS: 1630 Leslie Helena MT 59601

PHONE: 442-5489 H 442-4101 W

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB153

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: see Exhibit #3

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Roos

TESTIMONY ON SB 153

Paul S. Roos
1630 Leslie
Helena, Mt 59601
442-5489

January 20, 1989

I would like to make three main points regarding the need and fairness of this proposed legislation.

1. Historically, Montana's float fishing outfitters have operated since at least right after World War II using guides as independent contractors.

a. An outfitter would need an occasional guide and pay the guide an agreed upon amount to take a client fishing. This has been going on since the 1940's.

b. Personally, in the late sixties as a guide I was paid as an independent contractor, and since 1970 we have used guides as independent contractors.

2. The nature of the business demands guides who fit the criteria of an independent contractor and who do not seem to fit the definition of an employee.

a. Hours are flexible and determined by the guide and the clients in most cases.

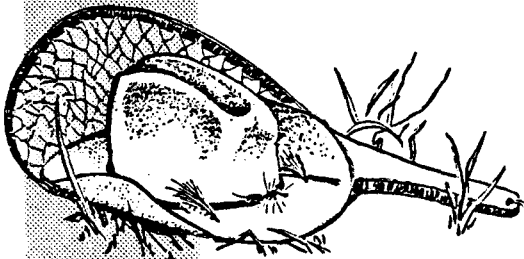
b. The guide by the nature of the job must be responsible to make decisions regarding when, where, and how the job must be done.

c. A guide knows that his job is to provide the client with an enjoyable day. The job description to accomplish this will vary from day to day and client to client.

d. Many if not most guides own their own equipment. In order for a guide to be truly professional, he or she must spend a lot of time on the river. It is a professional guide's business to know what's going on. He needs to own his own equipment in order to have access to day to day river conditions.

e. In our industry day to day demands as to the number of guides an outfitter needs fluctuates greatly. Therefore, it makes sense for guides to contract to different outfitters on a demand basis.

**PAUL ROOS
OUTFITTERS**



Ex. # 3
1/20/89
SB 153

3. It has been my personal experience through the last few years in dealing with the issue of whether guides are employees or independent contractors that there is mass confusion and anxiety in the industry regarding this issue. There is no uniformity in interpretation or enforcement of Department of Labor and Industry regulations regarding floating/fishing outfitters. This legislation will enable a guide's job description to legitimately determine whether or not he or she is an employee or an independent contractor.

(This sheet to be used by those testifying on a bill.)

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 1/20/89

DATE FILE NO. SB 153

NAME: Stan Bradshaw

ADDRESS: 824 9th, Helene

PHONE: 443-4171

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: S.B. 153

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENT: See introduced testimony
Exhibit 4

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE BILL 153

Testimony of Stan Bradshaw
January 20, 1989

Mr. Chairman and members of the committee, my name is Stan Bradshaw. Among other things, I work in the summer as a float fishing guide. I wish to testify in support of Senate Bill 153.

S.B. 153 seeks to amend language in the outfitters statute (section 37-47-301 et seq. MCA) which characterizes professional guides as "employees". The amendment adds language to the definition of "professional guide" which recognizes that a guide may also be an independent contractor.

Prior to the summer of 1988, the Workers Compensation Division apparently recognized that, in certain circumstances, guides could be considered independent contractors by certifying a number of guides as independent contractors (See attachment A). As a result, outfitters did not have to pay workers compensation premiums for those guides who were independent contractors.

In June, 1988 the Workers Compensation Division notified both outfitters and guides who applied for certification as independent contractors that, in part because of the in the laws "pertaining to Fish, Wildlife and Parks," (See attachment B). guides could not be considered independent contractors. The only law addressing this that was ever a Fish, Wildlife and Parks statute was the outfitter statute, which defined guides as employees.

This interpretation causes considerable difficulty for outfitters. The nature of the float-fishing outfitting business is one of fluctuation. Trips booked are most often day trips and are likely to be booked at any time. The numbers of clients can vary wildly. One day, an outfitter may have a party of four; the next he may have twelve people. Accordingly, the number of guides needed can fluctuate wildly. It is very difficult, if not impossible for an outfitter to keep a full complement of guides employed all the time. As a result, there are many float guides who have their own boat and who work for any number of outfitters as they are needed.

For example, I guided for at least three outfitters during the summer. I made a point of communicating to those outfitters that I was available on an as-needed basis to guide. I had my own equipment and own transportation. When I am on the river with the client, I am completely outside the control of the outfitter. He does not direct me where to fish, what flies to use, or what methods to use. As an independent contractor, those are all my decisions to make. Arguably, at least, these things bring me under the criteria of independent contractor.

It is not the intent of S.B. 153 to characterize all guides as independent contractors. S.B. 153 simply removes an artificial

constraint to the recognition of certain guides as independent contractors. If a guide meets the workers compensation criteria defining an independent contractor, he should be so recognized. If he does not, he should be treated as an employee. S.B. 153 simply allows the latitude for that recognition when it is appropriate.

I urge your support of S.B. 153.

DEPARTMENT OF LABOR & INDUSTRY

EX-77
11/20/87

DIVISION OF WORKERS' COMPENSATION

SB 153

TED SCHWINDEN, GOVERNOR

MARGARET "PEG" CONDON BLDG.
550 LAST CHANCE GULCH



STATE OF MONTANA

HELENA, MONTANA 59601

July 8, 1987

Jim VanMeter
Box 358
Clancy MT 59634

Re: Independent Contractor Exemption

Dear Mr. VanMeter:

Your application for exemption from coverage under the Workers' Compensation and Occupational Disease Act as an independent contractor has been approved in accordance with Sections 39-71-401 (3) MCA, and ARM 24.29.706. This exemption is only recognized in the state of Montana.

This exemption from coverage under the Workers' Compensation and Occupational Disease Act applies only to you as an individual holding yourself out to the general public to be an independent contractor, doing business as J VanMeter, Guide and does not include any employees you may hire. This exemption will be effective from 7/8/87 to 7/7/88 unless sooner cancelled upon your written request or otherwise by the Workers' Compensation Division.

Sincerely,

Karen Doig
Policy Compliance Investigator
Insurance Compliance Bureau

KD/cl

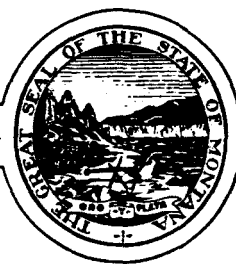
Attachment A

DEPARTMENT OF LABOR & INDUSTRY
DIVISION OF WORKERS' COMPENSATION

Ex. # 4
1/20/89
SB 153

TED SCHWINDEN, GOVERNOR

MARGARET "PEG" CONDON BLDG.
5 SO. LAST CHANCE GULCH



STATE OF MONTANA

HELENA, MONTANA 59601

June 27, 1988

TO: Interested Parties

FROM: Hiram Shaw, Chief Insurance Compliance Bureau *HS*

SUBJECT: Fishing & Hunting Outfitters: Responsibilities Under the Workers' Compensation Act

Businesses employing fishing and hunting guides must obtain a workers' compensation policy covering all employees. (Sec. 39-71-401, MCA)

Fishing and hunting guides do not qualify as independent contractors based on laws pertaining to Fish, Wildlife and Parks, Unemployment Insurance and Workers' Compensation.

Family Member Exemption Void: The Montana Supreme Court recently ruled unconstitutional which exempted members of an employer's family dwelling in the employer's household from coverage. Employer's family members must now be covered if paid wages.

Exceptions: There are many variations and exceptions to the general coverage requirements. The best rule of thumb is to assure all employees are covered, even if such employees are only temporary.

For further information about your specific situation and requirements, please call the Division of Workers' Compensation, Insurance Compliance Bureau, Uninsured Employers' Unit (444-6530).

Attachment B

BLACKTAIL RANCH

Wolf Creek, Montana 59648

Phone: 406-235-4330

SANDRA RENNER

TAG RITTEL

RANCH VACATIONS • MUSEUM • CAVERN • PAINT HORSES • HUNTING

BILL NO.

DATE

5
1/20/89

BILL NO.

SB153

January 20, 1989

Mr. Chairman Committee members,

My name is Tag Rittel and I represent Montana Outfitter and Guides Assoc. We highly support S.B. 153. This bill places the professional guide as a independent contractor which is what he is in most cases. Most guides use their own equipment; like boats, for floating, trucks, horses, and riding gear. We feel that they should be classified as Independent contractors.

Sincerely

Tag Rittel
Chairman of Political Action Comm.
Montana Outfitter and Guides Assoc.



51st Legislature

AMENDMENT TO S.B. 150 AS INTRODUCED (WHITE)

1. Title, line 5.

Strike: "LIMIT"

Insert: "TO GENERALLY REVISE"

2. Preamble, lines 14 through 21.

Strike: lines 14 through 32 in their entirety

Insert:

WHEREAS, the Legislature of the State of Montana finds that the present attorney-in-fact exemption is limited to those based on a special power of attorney only;

WHEREAS, the Legislature of the State of Montana finds that the attorney-in-fact exemption from the requirement that a person be licensed as a real estate broker or salesperson should be expanded to include those based on a general power of attorney;

WHEREAS, the Legislature of the State of Montana finds that there is a potential for use of the attorney-in-fact exemption, as existing and as amended herein, on a regular or consistent basis or as a course of business, thereby avoiding license requirements and negating adequate safeguards to the public;

THEREFORE, the Legislature of the State of Montana finds it appropriate to expand the attorney-in-fact exemption to include such that is based on a general power of attorney, but to limit application of the resulting attorney-in-fact exemptions to occasional use under circumstances wherein it is reasonably certain that the intent is not to avoid the licensure requirements and wherein it is reasonably certain that adequate safeguards to the public are maintained.

ex 76
1/20/89
SB 150

3. Page 2, lines 12 through 19.
Strike: lines 12 through 19 in their entirety
Insert:

(2) apply to any person acting as attorney-in-fact under
(a) the a duly executed special power of attorney from
the owner of any real estate authorizing the final consummation
of any contract for the purchase, sale, exchange, renting, or
leasing of any real estate, or
(b) a duly executed general power of attorney,
(c) unless the person so acting under (a) or (b) does so on
a regular or consistent or repeated basis for another or others,
for valuable consideration in conjunction with a business, or for
the purpose of avoiding license requirements;

MEMORANDUM OF INTENDED TESTIMONY

51st Legislature

SB 150

Senate Business and Industry Committee

January 20, 1989

10:00 am

Room 410, State Capitol Building

PROPONENT

Martin Jacobson, staff attorney

Department of Commerce Board of Realty Regulation

1424 9th Avenue

Helena, Montana 59620

office 444-4290

message 444-3737

Introduction

For the purposes of this presentation, "broker" includes real estate broker and real estate salesperson, "owner" includes owner, buyer, or lessor of real estate, and "sale" includes sale, purchase, and lease of real estate.

Brokers are required to be licensed by this state, pursuant to Title 37, chapter 51, MCA. This title does list certain exemptions to the licensing requirement. Section 37-51-103, MCA, in general, provides that owners, auctioneers employed by owners, attorneys-in-fact, attorneys at law, court appointees, trustees, and receivers, public officials, agents in mineral interest transactions, and managers of low-income housing are exempt from the license requirements.

SB 150 amends one of these exemptions--the attorney-in-fact exemption contained in section 37-51-103(2), MCA.

Attorney-in-Fact

An attorney-in-fact is an agent or substitute, appointed and authorized to act in the place of, or for, another, called a principal. The authority may be for single particular purpose or act or for business in general. An attorney-in-fact differs from other agents in that the authority is conferred by a "letter of attorney" or "power of attorney." See, generally Black's Law Dictionary 117 (rev. 5th ed. 1979). In a real estate transaction the owner is the principal and the attorney-in-fact is the agent acting on behalf of the principal under written authority.

The authority conferred to an attorney-in-fact may be confined, specific, and limited. This would be by a special power of attorney. However, the authority may be unlimited.

1/20/99

SB 150

This would be by a general power of attorney. Because the principal becomes bound by attorney-in-fact's actions, the conferment of a power of attorney should be an informed conferment and, probably, one based on the advice of legal counsel.

Reason for Legislation

The part being amended has existed since at least 1963. From all appearances, from that time until about 1987 no significant problem arose regarding the statute. In 1987, the board became aware of an increasing use of, and increasing inquiries concerning, the "attorney-in-fact" exemption by unlicensed persons engaged in real estate businesses. The increasing use is not confined to the board's interpretation of the statute--that the exemption is limited to the single final consummation of an existing transaction and is not intended to be applied in "beginning to end" transactions, whether isolated, repeated, or as a course of business. The increasing use is based on an interpretation that the exemption applies to a "blanket" power of attorney authorizing beginning to end transactions, the final consummation of any and all parts of the transaction, no matter how distant from the preferred "final consummation."

It is the board's opinion that there does exist room for interpretation, however slight, and that it would be most prudent to obtain legislation to clearly limit the exemption. This is the intent of the board in its request. This is how SB 150, as introduced, reads.

Reason for Amendment to Legislation

The bill, as introduced, is the board's original proposal. It was submitted to the Department of Commerce, in accordance with executive branch procedures several months ago. Since that time, the board, with input from the industry, has reconsidered the original draft. The amendment now requested will result in better legislation.

As amended SB 150 will continue to allow an exemption for the limited power of attorney. An owner in the midst of a real estate transaction may lawfully allow another person to act on the owner's behalf to consummate the transaction. As amended SB 150 will create an exemption for a general power of attorney. An owner may lawfully allow another person to act on the owner's behalf to handle an entire transaction. However, both exemptions are limited by the prohibition that the exemptions do not apply if used on regular or consistent or repeated basis, in conjunction with a business, or for the purpose of avoiding license requirements.

STANDING COMMITTEE REPORT

January 20, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 150 (first reading copy -- white), respectfully report that SB 150 be amended and as so amended do pass:

1. Title, line 5.

Strike: "LIMIT"

Insert: "TO GENERALLY REVISE"

2. Page 1, line 13.

Following: ";"

Insert: "and"

3. Page 1, line 18.

Following: "public"

Strike: "."

Insert: ";and"

4. Page 1, lines 19 through 21.

Strike: lines 19 through 21 in their entirety

Insert: "WHEREAS, the Legislature of the State of Montana finds the present attorney-in-fact exemption is limited to one based on a special power of attorney; and

WHEREAS, the Legislature of the State of Montana finds that the attorney-in-fact exemption from the requirement that a person be licensed as a real estate broker or salesman should be expanded to include a general power of attorney.

THEREFORE, the Legislature of the State of Montana finds it appropriate to expand the attorney-in-fact exemption to include one based on a general power of attorney and to limit all attorney-in-fact exemptions to occasional use under circumstances in which it is reasonably certain that adequate safeguards to the public are maintained."

5. Page 2, line 13.

Following: "under"

Strike: "the"

Insert: "a"

Following: "executed"

Insert: "special or general"

EXHIBIT NO. 8

DATE 1/20/89

BILL NO. SB150
Page 2 of 2

Business and Industry, SB 150

6. Page 2, lines 17 and 18.
Striker: "any owner or lessor"
Insert: "a person or persons"

7. Page 2, line 19.
Following: "consideration"
Insert: "in conjunction with a business or for the purpose of
avoiding license requirements"

AND AS SO AMENDED DO PASS

J.C.
1/21/89
7:44 AM.

Signed: _____
Gene Thayer, Chairman

COMMITTEE ON

Business & Industry

DATE 1/20/89

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Stan Bradshaw	Self	SB153	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Bob E. Visser			<input type="checkbox"/>	<input type="checkbox"/>
Gordon Brooks (for P. Bean)	Commerce	SB153	<input type="checkbox"/>	<input type="checkbox"/>
Tom Hoggood	Mont. Assoc. of Realtors	SB150	<input type="checkbox"/>	<input type="checkbox"/>
Martin Jacobson	Commerce	SB150	<input type="checkbox"/>	<input type="checkbox"/>
A. Brunner	MOHA		<input checked="" type="checkbox"/>	<input type="checkbox"/>
Jim Brunner	Power, MT	SB153	<input type="checkbox"/>	<input type="checkbox"/>
Jack D. Hutchison	FFDAM	SB153	<input type="checkbox"/>	<input type="checkbox"/>
Bob Butler	FFDAM	SB153	<input type="checkbox"/>	<input type="checkbox"/>
Bruce S. Reed	FFDAM	SB153	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Way Kattel	M. D. G.A.	SB153	<input checked="" type="checkbox"/>	<input type="checkbox"/>

(Please leave prepared statement with Secretary)