

MINUTES

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

Call to Order: By Chairman Gene Thayer, on January 23,  
1989, at 10:00 A.M.

ROLL CALL

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

Members Excused: None

Members Absent: None

Staff Present: Mary McCue, Legislative council

Announcements/Discussion: None

HEARING ON SENATE BILL 195

Presentation and Opening Statement by Sponsor: Senator Tom  
Keating, Senate District 44, stated a legislative audit  
had revealed the Department of Labor and Industry was  
required by law to supply a list of corporations doing  
business in Montana. There has been no source of  
revenue generated for the Department of Labor and  
Industry to develop this list.

SB 195 was designed to establish the Department of  
Revenue as the supplier of the audit listing, as the  
law also requires them to have a list of corporations  
for their records. The bill has designated the  
Secretary of State as the supplier of the list for the  
Department of Revenue. Such a list would be in  
existence, as all corporations doing business in  
Montana must be registered with the Secretary of State.

List of Testifying Proponents and What Group They Represent:

John W. Northey - Legislative Auditor's Office

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Mr. Northey said, SB 195 contained recommendations made to the Department of Revenue in the last two audit reports. Mr. Northey stated, SB 195 was a clean-up bill, and he would be happy to answer any questions.

Questions From Committee Members: None

Closing by Sponsor: Senator Keating simply stated he closed.

DISPOSITION OF SENATE BILL 195

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Williams moved SB 195 Do Pass. Senator Lynch seconded the motion. The Motion carried Unanimously.

HEARING ON SENATE BILL 151

Presentation and Opening Statement by Sponsor: Senator Judy Jacobson, Senate District 36, stated the bill was requested by the cosmetologists. SB 151 was written to expand the Board of Cosmetology to include either a manicurist or an electrologist. She said, both fields were represented by the Board of Cosmetology, but were not allocated a position. She stated, the bill also allowed for the addition of two people affiliated with cosmetology. The Board of Cosmetology has requested being expanded by three members, and the authority to regulate the practice of booth rentals. She said the Board now regulated the shop, but not the rental booths within. This bill would also provide for examinations and licensing being administered by the Board of Cosmetology rather than the Department of Commerce.

List of Testifying Proponents and What Group They Represent:

Rick Tucker - Montana State Cosmetology Association  
Darlene Battaiola - Montana State Cosmetology  
Association, Butte, MT  
Beverly Ball - Great Falls, MT

List of Testifying Opponents and What Group They Represent:

Nancy Marshall - President of the Montana Board of  
Electrologists

Farrell Giffin - ACME Beauty College, Billings, MT

Vince Maddio - Maddio's Cosmetology College, Helena,  
MT.

Marlene Sorum - Board of Cosmetology

WRITTEN:

Lane F. Mathis - Owner, Futura Lane and Associates,  
Helena, MT (See Exhibit #6)

Dudley Williams - Past Chairman, Board of Cosmetology  
(See Exhibit #8)

Testimony:

Rick Tucker stated SB 151 proposed four major changes. The number of Board members would be increased from four to seven. The reason was to include manicurists and electrologists to be represented on the Board.

The bill would require licensing of booth operators separately from the shop. He said this change was necessary for separating the responsibility of liability for shop owners and booth operators.

He said, the next part of the bill clarified that the board was the proper entity to examine the applicants for a license. He said the Chamber of Commerce had control of examination now, and the bill would give control to the Board of Cosmetology.

Last, he said, the bill provided for regulation of booths, as well as all other cosmetology facilities. (See Exhibit #1).

Darlene Baltarola stated she represented the membership of the Montana State Cosmetology Association, and supported SB 151. By law, neither a manicurist nor an electrologist could serve on the Board of Cosmetology unless they were licensed cosmetologists as well. Passage of this bill allowed for a more democratic administration, and allowed those individuals to add their expertise in areas of their concern and concern's of the public they serve.

Mrs. Baltarola further stated the bill would regulate booth rentals. She asked that cosmetologists who rented booths be licensed individually, and regulated as any other self-employed cosmetologist. The salon owner was simply a landlord, and the rental

booths were individual businesses. She asked that members of the Board of Cosmetology be allowed to administer examinations as they did in the past. They required that only individuals, who were licensed within an area, be allowed to act as examiners within their professional areas. (See Exhibit #2)

Beverly Ball said she supported SB 151, especially the provisions that acknowledged the independent licensed rental booth operators. She urged it be inserted into the statute to define individual contractor.

Opponents:

Nancy Marshall, an electrologist, opposed the bill because electrologists were not guaranteed a position on the Board of Cosmetology. Secondly, they were presently trying to transfer authority of electrologists to the management of the Medical Board of Examiners. The reason for the request was a concern for public well being. We, as electrologists, work beneath the skin, breaking the outer skin layer. She cited a risk of exposure to infectious diseases such as hepatitis or AIDS. She stated was a medical procedure, and demanded the utmost cleanliness and sterilization. She stressed the problems of being governed, without representation, by a board that knew nothing about the profession. (See Exhibit #3)

Farrell Griffin testified against passage of SB 151. He explained his opposition was based on the fact that no manicurist could serve on the Board of Cosmetology until the year 1991. Manicurists have been licensed since 1986, and the law stated they had to be in practice in the State for five years. (See Exhibit #5)

Vince Maddio opposed the bill because he didn't want other instructional institution owners examining his students. He felt there could be a conflict of interest. If one of the examiners who owned a competitive business disliked his procedures, that examiner could discriminate against his students. He opposed a seven member board. He said, the extra money required for three more board members would be better spent in retaining another examiner for salons. He also supported Ms. Marshall and the electrologist in their request to be governed by the Board of Health. (See Exhibit #7)

Marlene Sorum felt the authority to examine applicants shouldn't be placed back with the board. She stated the Board had spent over \$7,000 developing the present

examination system, whereby trained inactive instructors gave the tests. To revert back wasted that money. The system, as it presently existed, gave the applicants a place to appeal their grievances. If the Board administered the examination, where could they go? She felt licensing booths would be an exorbitant cost to the board, as more inspection personnel and office staff would need hired. She stated most of the 600 plus members were not aware of this bill, and wondered if a few were not pushing the legislation for personal gain. (See Exhibit #4)

Questions From Committee Members: Senator Lynch asked Nancy Marshall if there was another bill addressing the governing of electrologist by the Board of Health? She said there was, but it hadn't been assigned a number as yet.

Senator Meyer wondered if the test now given was practical or written, and who now administered it? Ms. Baltarola replied that the test contained both, and was administered by the Department of Commerce.

Senator Weeding asked Nancy Marshall if part of their legislation was to seek a position on the Board of Examiners? She said no, we simply want to work in liaison with them. She urged careful consideration of this bill on its own merits because she questioned acceptance to the Board of Medicine as proposed in the up coming legislation.

Senator Thayer asked Mr. Maddio if he had any examining experience? He stated he had the opportunity to examine for cosmetologists and also for barbers. Since the cosmetology board had been placed under the Department of Commerce, their testing procedure had improved ten fold. He said that he had been participating in the Department of Commerce's training program. They were being trained to administer fair, impartial, examinations. He felt that may not be the case if the Board of Cosmetology was administering the examinations with untrained, inexperienced instructors.

Senator Williams requested clarification of intent in regard to page 1, line 19 of the proposed bill. Senator Jacobson replied, as the bill was written, the new member of the board was to be a cosmetologist or a manicurist, not one of each.

Senator Williams asked who was paying the Workers' Compensation for the operators of booths? Mr. Tucker stated, probably one third of the shops in Montana were

still leasing booths. He said booths had become a liability because the Workers' Compensation and Unemployment not paid by booth operators was being assessed against the shop owners, or landlords. They may or may not be covered under the liability policy in force on the shop in which they worked. That was why we have requested this legislation to license each booth operator individually.

Mrs. Baltarola responded to the same question. She said she rented booth space, including mirrors, hydraulic chairs, shampoo bowls, dryers, etc. Each booth renter operated their business within their booth, on their own. She stated they serviced their own clients, purchased their own equipment, and bought liability and malpractice insurance. They were personally responsible for everything they did at their booth. By being individually licensed, they would be totally responsible for all liabilities rather than the landlord.

Senator Lynch asked Mrs. Baltarola to address the allegations of pass, fail rates prior to the Department of Commerce taking over, and also the unfairness of testing by the owners and Board of Cosmetology members? She said they were just allegations. We have not asked that the Board of Cosmetology act as a board of examiners. We simply asked that the administration of all of the examinations be returned to the board members rather than the Department of Commerce. She stated that for a while the failure rate was high. She questioned whether that meant something was wrong with the examiners or that people were unprepared for the test?

Senator Meyer asked Mrs. Baltarola if she had said the Board of Cosmetology did not want to give the examinations? She replied it should be back under the direction of the board. They should decide how, when, and where. She said they did not exactly need to be the examiners, but they should have the ability to decide who would do the examining.

Senator Meyer stated on page 7, line 8, it says "examination shall be conducted by the Board". I think you should put, supervised, or some other word in place of "shall". She replied "conducted by" should be changed to "administered by".

Senator Meyer inquired about the concept of total individual liabilities within the shop. Who would be responsible for common areas such as sidewalks outside? Mrs.

Baltarola replied she felt the salon owner would be responsible. The permanent liabilities would lie with the owner, personal liability with each individual.

Senator Boylan questioned the matter of the number of members aware of SB 151 being proposed to legislature. Ms. Baltarola said that last year all the affiliates of the Board of Cosmetologists were asked to inform their members and discuss proposals for solutions to their problems. It was brought before their delegates at the state convention last May. The delegates voted on all the proposals, amended some, and all were approved at the convention.

Senator Noble asked Marlene Sorum, with 5700 licensed cosmetologists, why are there only 600 members? She stated she didn't know.

Senator Noble said he wondered if Workers' Compensation was the reason for this bill? He received no direct reply from anyone.

Senator Lynch tried to clarify the liability problems discussed earlier. He stated under existing law, if a crime was committed in a rented apartment, the landlord wasn't liable. Should the landlord of a salon be responsible for a person causing personal damage simply because of the rental situation? He did not receive an answer.

Closing by Sponsor: Senator Jacobson stated, if people didn't join and become active in the organizations representing their business, that was up to the individual. She said, if you want these changes within your organization, you have to work with that organization. So the charge by the board that cosmetologists didn't know what was going on was invalid at this point. If only 600 members were active and made constructive changes, then she thought the committee should consider their request. She also reminded them, neither the Board of Cosmetologists nor the Chamber of Commerce was the organization. She said, both simply worked for the organization. She thought what they were asking for was very reasonable.

She said there were some problems within the legislation as written. She suggested page 6, line 24 could be changed from saying that the examination be prescribed and given by the Board of Cosmetology to allowing the board to have more input into the examinations. Most other boards either contract them out, or oversaw the Department of Commerce or those

doing the examining. Obviously, if the Board was overseeing the examinations and there were no electrologists on the board, they would have to reconcile that problem themselves. She said the legislation had merit. She said she felt they had worked hard on it, and they had to pay attention to the active members of their organization.

## DISPOSITION OF SENATE BILL 151

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

## HEARING ON SENATE BILL 179

Presentation and Opening Statement by Sponsor: Senator Mike Walker, Senate District 20, opened by saying, SB 179 was a bill requesting a change in educational requirements of cosmetologists. The people operating the schools wanted to require a high school diploma or its equivalent to enter cosmetologist training. He said he had been informed that technology was changing so rapidly it seemed inadequate to require only an eighth grade education for people who worked with chemicals and put them on people's faces and hair.

List of Testifying Proponents and What Group They Represent:

Rick Tucker - Montana Cosmetology Association  
Beverly Ball - Montana State Cosmetology Association  
Darlene Baltarola - Montana State Cosmetology Association  
Claudette Morton - Board of Public Education

List of Testifying Opponents and What Group They Represent:

Farrell Griffin - ACME Beauty College, Billings  
Marlene Sorum, Great Falls MT  
Mac Evans - Testimony by Senator Hager

Testimony: Rick Tucker told committee members, the state convention of cosmetologists addressed these requirements of education and endorsed them. (See Exhibit #1)



Beverly Ball stated she had supported this legislation the last three sessions. She pointed out, having a diploma or G.E.D. wasn't an entrance requirement, it was to be a requirement for examination. They allowed for the equivalency to be obtained during the two thousand hours of study required for examination. She said the course generally ran twelve to fourteen months. She said applicants for a G.E.D. had to be eighteen years old to enroll. This provision allowed them to enroll in schools of cosmetology at seventeen, and acquire their equivalency degree while studying cosmetology. She said their material safety data sheet, provided by OSHA, contained some very technical terminology. (See Exhibit #15) She said students had to be able to read and completely understand the technical material. The proposed requirement would meet regulations of their proprietary institution, and put them in line with the ability to benefit students. She stated, the board couldn't have an in house equivalency program because they were not connected with public education.

She said, currently national health care professionals were providing educational programs for hands on professions. She felt, therefore, schools of cosmetology, manicurists, and electrology would have to develop and incorporate courses such as bacteriology, sanitation and basic sterilization. She said the would have to document their curriculum in order to get support from the national accreditation commission. (See Exhibit #2)

Darlene Baltarola testified, statutes adopted in 1929 required an eighth grade education to become a cosmetologist. She stated, today we have advanced technology in cosmetology and need to provide public safety. (See Exhibit #3)

Claudette Morton said she felt all students should be encouraged to obtain a high school education. She said that all communities who had schools of cosmetology also offered adult education programs. She stated, there would be no problem for the students to work on their GED and an external diploma program at the same time.

The Board of Education urged passage Of SB 179, and asked the committee to consider an amendment at the top of page 2. Evidently, before the new constitution, the Board of Education had responsibility for all courses of study for professions. She said they had not become aware of their responsibility, to

nothing in that area, and would appreciate not having that function. She said legislature had assigned the responsibility to them, and they wished to request its removal. She cited the Board of Education as wanting to leave the course of study to the Board of Cosmetology. She said they did support the other portions of the bill. (See Exhibit #12)

Farrell Griffin opened by saying he was an eighth grade graduate. He had attended beauty school before he had his GED. He had supported himself, raised four children, and had been successful in his cosmetology career. He said he owned the ACME Beauty School, and a manicuring school. He stated he was an association member, and until the day of this hearing he hadn't seen a copy of SB 179. However, he said he was aware of it.

Mr. Griffin distributed a letter from the publishing company that published the main text that was used, in most states, for cosmetology. He pointed out that the publishers attempted to address sixth through eighth grade readers. He said there were some multi-syllable words requiring tenth grade education. The letter further stated a high school education wasn't necessary to comprehend the text. He stated they simply had to be progressive, and have a desire to learn. He said, if the high school diploma, or the GED requirement limited just a few people from obtaining a job, the requirement was too severe. (See Exhibit #4)

Marlene Sorum said she was concerned about the added cost of earning their GED. She stated she was also concerned with the two thousand hours allotted the students to complete the course. She said she thought eight hours in the class room, plus four more at night, may be too much of a load. (See Exhibit 14)

Senator Hager said he had a telephone call from a Mr. Mac Evans. He said Mr. Evans had told him there were students presently enrolled, who would not qualify for the GED testing. Senator Hager said Mr. Evans opposed the bill on those grounds.

Questions From Committee Members: Senator McLane inquired whether a grandfather clause was included so those already practicing without required education could continue? Mr. Tucker said it wasn't necessary because this legislation only affected future students, not those enrolled prior to the legislation.

Senator Hager asked if, in the past, there had been a problem with cosmetologists who didn't have a high school diploma or a GED? No one present expressed knowledge of any such problems.

Senator Williams questioned if the students were paid at any time during the two thousand hours required? Mrs. Ball replied, the only payment would be in the form of Pell Grants or various other programs.

Senator Williams asked Darlene Baltarola what prompted the legislation? She stated, most of the students, who are without the required education, are the people who need monetary assistance from the government. In order to get the money they need, they had to be able to prove their ability to benefit. That meant the students either had to pass a qualifying examination, have a diploma, enroll in the GED program or have their GED already.

Senator Weeding recognized a need for the students to be familiarized with the chemicals which would be used in their business, but why would the person need a diploma or GED? Beverly Ball explained, the importance of being able to stay abreast of advancing technology really required more education than obtained only through the eighth grade.

Senator Weeding asked, are you saying a person without a high school education could not read and understand the meaning of the chemical data Mrs. Baltarola said there were exceptions, some do really well, most often those with less education were the students having the most trouble or failing.

Closing by Sponsor: Senator Walker said that after listening to the hearing, he thought people would be better off getting their GED. He stated with that achievement, they would really be doing something with their lives rather than just getting by. He cited state law as requiring students to attend school until their sixteenth birthday. He said that in itself went beyond the eighth grade. He said they were trying to prepare people for life. He urged passage of the bill.

#### DISPOSITION OF SENATE BILL 179

Discussion: None

Amendments and Votes: None

Recommendation and Vote: None

DISCUSSION ON SENATE BILL 153

Senator Lynch asked why the department had taken it upon themselves to interpret the law, changing the criteria guides were judged on, prior to this rule making session? He also asked if the department was aware of SB 153, and why no one was here at the hearing? Is there anything the committee should know that they don't know?

Steve Shapiro of the Workers' Compensation Division, apologized for not attending the hearing. He said their tracking system had somehow missed the bill. Consequently, they had missed the hearing. He said he had given Mary McCue written material, which she has handed out to the committee members. (See Exhibit #16)

He said the reason for the blanket determination that guides were not independent contractors was based on the language in Title 37. The language indicated the guides were employees of the outfitters. He stated, although he had not read the bill, he understood the language in the bill said they could be employees, or independent contractors. He said, with its passage, the question would be resolved. He said it would be based on whether they fit the definition of an independent contractor. He stated the bill allowed the possibility of exemption from coverage, if in fact they were independent contractors.

Senator Lynch asked for a clarification of the situation where a guide worked as an independent contractor and was injured. Could the outfitter come back and apply for Workers' Compensation, and cover the injury after the fact? Mr. Shapiro replied the guide wouldn't be covered honestly. He said, the problem would lie with the payroll report coming in at the end of the quarter. He stated there was always the possibility that an extra hand could have been added.

Senator Meyer asked, if a person had been working as an independent contractor for six months and the month following the injury as an employee, would the department investigate? Mr. Shapiro said the department investigated each claim, but investigations varied. In some cases there was a hint of a problem, and some passed through. He said that if the outfitters insisted the guides enroll, then the

department would have documented evidence.

Senator Williams wanted to know where the burden of proof was placed if a guide was hurt and claimed to be an employee? Mr. Shapiro replied, that would be up to the accident investigator. The outfitter may or may not back the story. He said that if the story was not backed up, the guide would have to provide facts and proof to the department.

Senator Williams asked Mr. Shapiro if he felt there were a lot of people trying to get around Workers' Compensation, and was that the reason for much of this legislation? Mr. Shapiro agreed, he said he felt some jobs were offered in a manner to avoid Workers' Compensation. He said he thought the employer may tell his employee he could work as long as he worked as an independent contractor, otherwise, there was no job.

Chairman Thayer wondered if there was a provision where an agreement was made and signed by both parties before the job began? Mr. Shapiro said he felt there was likely a percentage of people waiving workers' compensation, but they could not waive the act. He said, when you looked at the language, a workers status was designated by work details entirely. He stated that if there was evidence of equipment ownership or actual self-employment, the individual would then fall within the self employment tax category. He said one potential problem when waiving workers' compensation was the tendency to seek benefits following an injury.

DISPOSITION OF SENATE BILL 153

Chairman Thayer announced that Executive Action would be taken at Wednesday's meeting. He said that was the day requested, by the sponsors.

ADJOURNMENT

Adjournment At: 12:04 p.m.

GT/ct

  
SENATOR GENE THAYER, Chairman

ROLL CALL

BUSINESS & INDUSTRY COMMITTEE

DATE 1/23/89

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.

SENATE STANDING COMMITTEE REPORT

January 23, 1954

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration SB 195 (first reading copy available), respectfully report that SB 195 do pass.

DO PASS

Signed: \_\_\_\_\_  
Gene Thayer, Chairman

1-23-54  
et  
2-55





SENATE BILL 151

Mr. Chairman members of the committee.

My name is Rich Tucker.

I represent the Montana State Cosmetologists Association, and appear here in support of Senate Bill 151.

This bill has four changes:

1. Increase the number of members on the board from four to seven.

Presently there are no electrologists or manicurists on the board, their schools, or licenses are not represented on the board.

2. To require a person who manages or operates a booth to be licensed separately from that of the shop from which the booth is leased or rented. This change is necessary to separate responsibility and liability between the shop owners license and the booth operator.

3. To make clear that the board is the proper entity to examine applicants for a license. (note 2-15-121) and 37-1-104 (4))

4. Provide for the inspection of booths as well as other shops of cosmetology.

5. We have here 4 professional cosmetologists and school owners to give testimony in support of this legislation.

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

NAME: Darlene Battaglia DATE: 1-23-89

ADDRESS: 129 Oak Lane RR1 Butte Mt

PHONE: Home 494 7673 723-8565

REPRESENTING WHOM? Mont. State Comptology Ass.

APPEARING ON WHICH PROPOSAL: SB 151 SB 179

DO YOU: SUPPORT?  Both AMEND? \_\_\_\_\_ OPPOSE? \_\_\_\_\_

COMMENT: see Exhibits #2 and #11

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE BILL - 151

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS DARLENE BATTAIOLA. I APPEAR HERE TODAY IN SUPPORT OF SENATE BILL 151. I AM HERE REPRESENTING THE 600+ MEMBERS OF THE MONTANA STATE COSMETOLOGY ASSOCIATION AS ITS LEGISLATIVE PROJECT DIRECTOR AND IMMEDIATE PAST PRESIDENT. I AM A SALON OWNER AND A COSMETOLOGY SCHOOL OWNER FROM BUTTE.

EX. #2  
1/23/89  
SB51

their own business. Each of these Booth Renters is self employed and the currently licensed Salon Owner is simply a Landlord.

We would like to establish a licensing procedure that will acknowledge the Booth Renter as an independent business person who is solely responsible for complying with and meeting all Federal and State Laws, Rules, Regulations, Sanitary and Work Place requirements.

This Bill will better serve and ensure the well being of the public who are the clients of Booth Renters

This Bill will remove responsibility from the present salon owner, as in a Rental situation the Landlord has no control nor should she as to how the Renters run their own businesses. The Landlord will no longer be the SOLE Salon License holder.

This Bill ensures that all individuals who Rent Booths will be individually licensed and accountable.

We are asking that the members of the Board of Cosmetology be allowed to administer the State Licensing Exam as they did in the near past. These are the people who are involved in the profession and have the required knowledge and expertise in its practice.

Who better to select an appropriate and adequate exam site? Who better to set up work areas and ensure that all physical requirements are met to offer the best testing environment for the examinee? Who better to select knowledgeable, reputable and qualified licensed professionals

Ex. 2  
1123/89  
SB 151

to act as examiners? Who better to oversee and be available to make any minor or major decisions concerning problems or situations that might arise at an exam?

A prime responsibility of the Board of Cosmetology is the examining and subsequent licensing of our profession and they are the individuals who can best administer our exams.

We have established a separate inspection of Booth Rental areas in addition to regular salon inspections to better Protect Public Safety and sanitation.



SB 151

NAME: Marlene Green DATE: 1-23-89

ADDRESS: 1516-3rd Ave W Great Falls

PHONE: 453-2857

REPRESENTING WHOM? Board of Cosmetologist

APPEARING ON WHICH PROPOSAL: SB 151

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE?

COMMENTS: see exhibit 4

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

*Marlene Larson*

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 1/23/87

BILL NO. SB 151

SENATE BILL 151

Up to 1987 instructor exam given by the Board; 100% FAILURE 1st time. Applicants expected to fail the exam 1st time.

Examiners-3 School Owners or active Instructors.

Present Exam: exa

Present Exam: given by Inactive Instructors. Trained by Board.

Applicant Failure rate; 10%

Prior to 1987, we had an exam with 7 Instructor applicants; 5 failed

Prior to 1987 we had 15 to 20 complaints per student exam.

Present Exam a Board Member may attend as an observer.

INSTRUCTOR EXAM: 3 Inactive Instructors. Not affiliated with ant school.

MANICURE EXAM: Licensed Manicurist or Licensed Cos., specialized in Manicuring

ELECTROLOGY EXAM: Active Licensed # yrs. Attended workshop sponsored by Board isn Billings 1987.

72 Trained Examiners.

Applicant complaint process.

Administration cost triple with booth rental.

Mt. Cos. Ass. Mem. 666----- Mt. Licensee 5,784

Personal Liability.



THOMAS R. SEVERANCE,  
PRESIDENT

EXHIBIT NO. 5

DATE 1/23/89

BILL NO. SB 151

September 11, 1985

Farrel F. Griffin  
Acme Beauty College  
320 North 30th  
Billings, Mt 59101

Dear Mr. Griffin:

It is true, our STANDARD TEXTBOOK OF COSMETOLOGY, that students find so easy to use, attempts to meet the needs of sixth to eighth grade readers. However, because there are some technical terms in the chemistry and anatomy sections that have multi-syllable words, the book averages out at tenth grade. The bulk of the material, fortunately, is at the sixth to eighth grade level in the places where it is important...the practical work.

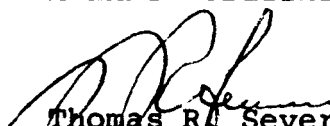
The most important consideration in the selection of students for training is to determine their ability to benefit. This is usually achieved through a cosmetology student aptitude test, a sample of which has been enclosed.

As you are probably aware, there are many fine hairdressers who do not have a high school education to back them up. They are simply talented people who have a desire to learn and to progress.

I hope this information is of some value to you. If I can assist in any other way, please let me know.

Cordially,

MILADY PUBLISHING CORPORATION

  
Thomas R. Severance  
President

TRS:ls

Enclosure

TO: 51st Legislature, hearing on Senate Bill No. 151, Room 410 - 10 A.M. 1/23/89

FROM: Lane F Mathis  
1228 11th Ave.  
Helena, Mt., 59601  
(Futura Lane and Associates - Hair Designers)

To whom it may concern;

My main concern in writing this letter is to address the changes proposed in Senate Bill No. 151, mainly the adding of two board members to the Board of Cosmetologists and the licensing examinations be administered by the board that is proposed in the bills guidelines.

I have been a Cosmetologist for approximately 13 years and have been active in many areas of our field, such as; continuing education; competition; our National Association (NCA); being an examiner for State Board exams; education demonstrations at seminars and currently owning and operating a salon in Helena. I feel that I have a strong motivation and dedication to our profession, which I hope is relayed in my comments and to all that I have worked with.

Our industry is one that is looked upon by new-comers or perspective students as a glamorous, relatively short training period, minimal educational background requirements, economically prosperous and often a profession that is a last resort with the escalating costs of higher education. The average income of Cosmetologists across the nation ranges from \$8,000.00 to \$12,000.00 a year, with only approximately 25 percent of those entering school that remain in the profession past three years. Also there are some startling figures recently that state that 20 percent of the Cosmetologists are servicing 80 percent of the public, with this figure in mind and others mentioned above, this leads me to believe that we need sound structure and guidelines regarding the education and licensing of our future professionals. I also realize that our profession has a long way to go to earn higher respect and consideration from both youth seeking a profession and our government.

There is no standard text or educational techniques that our industry follows and our schools are severely lacking in the communication skills and business skills necessary to succeed, given the odds are against them by 75 percent. With the corporate invasion in our industry and small salons expected to fail at a 70 to 90 percent in the next decade, it is imperative that we work slowly and efficiently in all areas that pertain to education and the licensing of students coming into our field. Certainly we are not in the categories of doctors or lawyers, nor can we ever expect to be, but the wide spread inconsistencies and under education that exists in our industry needs your concern, especially considering we are servicing the public and can effect their health or physically render harm if not trained or licensed properly.

By allowing the board to be the only examiners, concerns me in respect to the following areas: 1) Can the seven members be consistently impartial and afford to step out of an exam if they know someone or feel they cannot examine due to a person conflict? I feel not, as I know the current examinations are very strict concerning impartiality and fairness to the examinee. I feel that it would be very stressful on the board members and leave the examiner no choice but to examine in these cases, due to the heavy work load, not to mention the legal ramifications that may occur. 2) Can a person trained in only one specific area (Cosmetology, Electrology or Manicuring) cross over and examine in other areas, especially considering that the work load is often very heavy and strenuous? 3) Can the board member not affiliated with our profession in any way other than being on the board render the examination in regards to the technical aspects? 4) I also wonder if the recent changes that have occurred in our examinations (which I will address later in my statements) will continue to be of such a positive and effective movement, if there is not a variety of examiners and

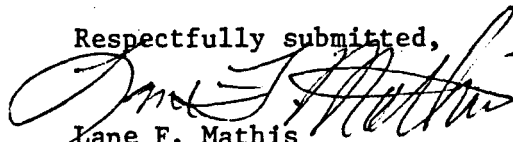
rotation of ideas exchanged? I feel that the recent exams of the past few years have been the most effective, impartial and properly administered of any I have ever seen. 5) Is it necessary to expand the board by two members? Taking into consideration the expenses needed to maintain the positions vs the costs of contracting qualified members out in the field. I don't know the cost comparisons, but common sense tells me that the wisdom gained from the variety of examiners and options open for examinee numbers at exams, demands more examiners available and more freedom for the board to rely on these options when impartiality and conflicts of interest occur. 6) Last, I think that saving the State money is important to the taxpayers, absolutely rendering the fairest and consistent exams is utmost important to the examinees and the public, and not limiting needed options for examinations are crucial to an industry that is in need of structure and constructive ideas and improvement.

I have been examining for over 5 years and when I first started examining for the state, the exams were as the rest of our industry was, in a state of confusion and very un-stable. The exams were not structured in a precise manner and no training was offered for the examiners. Often the members of the exam would talk afterwards and complete the decision to pass or fail, leaving new examiners easily influenced to altering their final decision, even if they were certain. This is of course the process of progress and we have immensely improved the exam for the better. Dudley Williams, Dave Blanco (Past president and past vice president of the board) are to be commended for their efforts for the improvement, as all are who affected these changes. I take my duties as an examiner very seriously and put great effort into notations and comments regarding my scorings, as do all the examiners. The tremendous amount of students taking the exams at times is staggering and makes for a very long day. Often there is barely time for lunch for breaks and certainly the stress of assisting in deciding an examinee's pass or fail is tremendous, can a limited law allowing only a few board members handle the areas of concern that I have mentioned. If the bill does pass as stated, I hope it is with great thought and consideration for the public and future licensees'.

As far as the rest of the bill is concerned, I urge the distinguished members to give serious thought to stronger regulations of booth rental in the cosmetology profession. It is one of the most vital areas our industry is engaged in and many implications need to be considered. My main feelings are that a person renting a booth in an establishment is in essence a separate business merely leasing or renting a space, as are all businesses and should be subject to all the taxes, licensing, health state, government, city, county requirements that other independent businesses or contractors are. I understand that it takes all the previously mentioned regulations to make our democracy and country the great one that it is, and operating a booth rental means that you can operate a business in your booth as any business can, making and operating as you see fit, as long as you work within the system of government and laws that exist, so please strongly look at the current booth rental operations and fairly enforce the same guidelines we all have to operate under.

I thank you for your time and wish you the best in your responsibilities, as you take on the immense task of legislating changes in our state. May God be with you in your decisions..

Respectfully submitted,



Lane F. Mathis

Owner of Futura Lane and Associates

EXHIBIT NO. 7

DATE: 1-23-89 1/23/89

BILL NO. SB151

NAME: VINCENT E. MADDIO

ADDRESS: 827 N. MAIN - HELENA, MT. 59601

PHONE: 442-1011

REPRESENTING WHOM? MADDIO'S COSMETOLOGY COLLEGE

APPEARING ON WHICH PROPOSAL: SB 151

DO YOU: SUPPORT?            AMEND?            OPPOSE?

COMMENTS: NOT IN THE BEST INTEREST OF THE  
GENERAL PUBLIC OR THE COSMETOLOGY PROFESSION.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Business and Industry Committee  
Montana State Legislature  
State Capitol Building  
Helena, Montana

Dear Committee Members:

I am writing concerning Senate Bill 151:

Section 1. section 2-15-1857, MCA. is amended to read:

2-15-1857. Board of cosmetologists. (1) There is a board of cosmetologists.

(2) (a). The board consists of seven members and may include:

(1) three licensed cosmetologists:

(2) one licensed manicurist or licensed electrologist:

(3) two persons who are members of or affiliated with a school of cosmetology; and

(4) one public member who is not engaged in the practice of cosmetology, or electrology, or manicuring.

(5) members are appointed by the governor with the consent of the senate.

I oppose the addition of three new members to this board. I feel the addition of one (1) new member is warranted. We need an odd number (5) ; but to increase by three is a useless waste of money. I feel the new member should be an electrologist.

Section 2. section 37-31-101, MCA.

(1) "practice and teaching of cosmetology" includes work generally and usually included in the terms "hairdressing" and beauty shops, booths, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, or hands.

(4) Booth means any part of a cosmetological establishment or manicuring shop that is rented or leased for the performance of cosmetologist services, as specified in 39-51-204 (1) (1).

(6) the qualification and registration of applicants for booth rental licenses: and

(c) Manage or operate a cosmetology shop, Manicuring shop, booth, or beauty parlor.

Section (5) section 37-31-302, MCA.

(5) No person may manage or operate a booth without a booth rental license.

Ex. #8  
1/23/89  
SB 151

I support the addition of booth rental licenses. We need to have a way to better control this segment of the industry. I come to this opinion based on the way agencies within the State of Montana treat booth leasing. We need this license to promote better sanitation for the public. The way it is now; no one has any control.

Section 6. section 37-31-303, MCA.

An applicant for a license to practice or teach cosmetology or for a license to practice manicuring must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed and given by the board and ~~given by the department, subject to 37-31-101.~~

Section 7. section 37-321-308, MCA.

The examinations shall be conducted by the ~~department, subject to 37-1-101~~ board. The examinations may not be confined to a specific method or system. The examinations shall be conducted by persons who hold a current license to practice in the profession for which the applicant is being examined.

I question whether this could be interpreted to mean the board members could do the actual examining again? We have just spent a good portion of the last (4) years trying to bring this board into compliance with the statutes. How can a board do the examining of an applicant and sit in judgment if an exam is challenged? Passage of this portion of this bill would be like taking a step backwards. Let's leave well enough alone. I oppose this portion.

I thank you for taking this letter into consideration when making your recommendations.

Sincerely  
*Dudley Williams*  
Dudley Williams  
Past Chairman Board of Cosmetology

EXHIBIT NO. 9DATE 1/23/89BILL NO. SB 179

Mr. Chairman, members of the committee, my name is Rick Tucker. I represent the Montana Cosmetologists Association and appear here in support of Senate Bill 179.

*Tucker*

This bill is asking that the educational requirement be raised from an 8th grade level to that of a high school graduate or equivalent, recognized by the superintendent of public instruction or a certificate of completion in a Vo-Tech program of cosmetology.

I have here 12 professional cosmetologists and school owners to give testimony in support of this legislation.

In addition I would like to add that this legislation was authorized and supported by state association at their last annual meeting by an overwhelming majority.

TESTIMONY IN SUPPORT OF SENATE BILL - 179 - BEVERLY BALL

*Ball*SUPPORTIVE CRITERIA

CRITERIA #1: This proposed requirement will meet the Regulations of our proprietary institutions in dealing with the "ability-to-Benefit" Student. Because we can't have an "in-house" GED program, it is currently impossible to monitor student GED progress.

CRITERIA #2: Current National Health Care professionals are providing massive educational programs for all "Hands-On" professions. Our school's have had to develop intense curriculums to address topics such as bacteriology, sanitation and sterilization. Educational requirements must be updated to provide maximum protection of the public.

CRITERIA #3: Documented Curriculums in support of the National Accrediting Commission of Cosmetology Arts and Sciences have developed the need for an increase in basic educational requirements in accord with the Department of Education.

14 Cosmetology Schools in Montana.

12 of these Schools are nationally accredited and fall under these directives.

CRITERIA #4: Minimum requirements of GED/High School diploma are impairative when considering public safety. The chemicals and chemical processes performed on salon clients must be understood and implemented in a cautious professional manner.



Ex. #10  
1/23/89  
SB179

CRITERIA #5: Currently a Manicuring License requires a GED/  
High School Diploma. This bill will allow Cosmetology  
Licensure comparable.

CRITERIA #6: We all know the exceptions to educational  
requirements. We also must acknowledge, in fairness, the  
importance of basic educational requirements when considering  
profitable and professional business success.

SENATE BILL - 179

*Battaiola*

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS DARLENE BATTAIOLA. I APPEAR HERE TODAY IN SUPPORT OF SENATE BILL 151. I AM HERE REPRESENTING THE 600+ MEMBERS OF THE MONTANA STATE COSMETOLOGY ASSOCIATION AS ITS LEGISLATIVE PROJECT DIRECTOR AND IMMEDIATE PAST PRESIDENT. I AM A SALON OWNER AND A COSMETOLOGY SCHOOL OWNER FROM BUTTE.

Ex. # 11  
1/23/89  
SB 179

SENATE BILL - 179 DARLENE BATTAIOLA

AN ACT REVISING THE QUALIFICATIONS REQUIRED FOR LICENSURE AS A COSMETOLOGIST REQUIRING A HIGH SCHOOL DIPLOMA OR ITS' EQUIVALENT FOR LICENSURE AND AMENDING SECTIONS 37-31-304 MCA.

Current Montana Statutes, which I believe were first enacted in 1929, require an eight grade education to become a licensed cosmetologist. This eight grade education is not adequate to meet the changing technology of cosmetology and to provide for public safety with respect to the use of the chemicals which are part of our every day services.

Today the Cosmetology profession includes a wide and expanding variety of services and products to offer the public. It utilizes a vast variety of chemicals and chemical compounds, which if used improperly are potentially dangerous to the public.

Since technology continually advances and many new products are introduced, almost daily, a licensed Cosmetologist must be informed and knowledgeable requiring in many instances, self education beyond what they would normally receive in Cosmetology School.

On becoming a licensed Cosmetologist one now receives a Manager Operators License. This allows them to work without the direct supervision of another licensed professional and to manage a Salon on their own. An eight grade education is not sufficient to prepare an individual to handle and understand

Ex. # 11  
SB 179  
1/23/81

all current state and federal laws and regulations regarding the work place.

Current Montana Statutes even require that a licensed Manicurist possess a High School Diploma or a GED. A Manicuring course only lasts 350 hours. The licensed Cosmetologist, will attend school for 2000 hours and will perform, as part of their job duties, the same services utilizing the same chemicals and techniques as a licensed Manicurist.

It has been suggested, that requiring a High school Diploma or a GED simply places another obstacle in the way of an individual to become self sufficient. Without either of these documents a prospective Cosmetology student, who is to receive any Federal Title IV Student Aid, will be required to show their "ability to benefit". They must do this by passing an extensive examination. It would seem more appropriate for an individual to take a GED Test, which has tutorial programs readily available, and is nationally accepted, in lieu of taking an Ability to Benefit Test.

Please know that this Bill does not exclude a person without a High School Diploma or a GED from attending Cosmetology School, but it does require that they possess one of these prior to becoming a licensed Cosmetologist. In fact the student is given this additional year to meet these educational requirements.

Please allow us to catch up with the times, with respect to the degree of education one needs to be a Cosmetologist and provide for the welfare and safety of the student and the public.

EXHIBIT NO. 12

NAME: Claudette Morton

DATE: 1/23/89

BILL NO: SB 179

ADDRESS: Board of Public Ed, Helena

PHONE: 4144-6576

REPRESENTING WHOM? Board of Public Education

APPEARING ON WHICH PROPOSAL: SB 179

DO YOU: SUPPORT?  AMEND?  OPPOSE?

COMMENTS: The Board of Public Education supports both amendments to this legislation. First, it is time to recognize that a high diploma or its equivalent should be the minimum entrance requirements. Second, through reorganization after the new constitution, the Board of Public Education was left as responsible to preserve the course of study in each of our departments. This is an ill-organized task for our board and should be handled with the Board of Cosmetology.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Did not testify

THOMAS R. SEVERANCE,  
PRESIDENT

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 13

DATE 1/83

BILL NO. SB 179

*Griffin*

September 11, 1985

Farrel F. Griffin  
Acme Beauty College  
320 North 30th  
Billings, Mt 59101

Dear Mr. Griffin:

It is true, our STANDARD TEXTBOOK OF COSMETOLOGY, that students find so easy to use, attempts to meet the needs of sixth to eighth grade readers. However, because there are some technical terms in the chemistry and anatomy sections that have multi-syllable words, the book averages out at tenth grade. The bulk of the material, fortunately, is at the sixth to eighth grade level in the places where it is important...the practical work.


The most important consideration in the selection of students for training is to determine their ability to benefit. This is usually achieved through a cosmetology student aptitude test, a sample of which has been enclosed.

As you are probably aware, there are many fine hairdressers who do not have a high school education to back them up. They are simply talented people who have a desire to learn and to progress.

I hope this information is of some value to you. If I can assist in any other way, please let me know.

Cordially,

MILADY PUBLISHING CORPORATION

  
Thomas R. Severance  
President

TRS:ls

Enclosure



(This sheet to be used by those testifying on a

SENATE BUSINESS & INDUSTRY  
bill.)  
EXHIBIT NO. 14

NAME: Marilyn Sorum

DATE 1/23/89  
DATE NO. 23 JB 179

ADDRESS: 1516 3rd Ave No Great Falls

PHONE: 403-2857

REPRESENTING WHOM? Board of Cosmetologist

APPEARING ON WHICH PROPOSAL: \_\_\_\_\_

DO YOU: SUPPORT? \_\_\_\_\_ AMEND? \_\_\_\_\_ OPPOSE?

COMMENT: \_\_\_\_\_  
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PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

## SENATE BILL 179

## SUPPORTIVE LIST OF CHEMICALS

Para-phenephene - Diamine. An aniline derivative used in hair dye.

Onychorrhexis. Brittleness and splitting of the nails.

Thioglycolic acid. Basic ingredient in permanent wave solutions.

Meta-toluene-diamone. Name given to oxidation used to provide blonde and red shades in hair dye.

Nitro-cellulose. Used in Nail Polish.

Diathermy. Method of raising body temperature in deep tissue using high-frequency current.

Ammonium-thioglycolate. Main ingredient in hair relaxer.

Quaternary ammonium Compounds. Used as a sanitizing agent.

Dodium Hypochlorite. Hand washing product.

Pathogenic and Non-Pathogenic Bacteria. Categories of bacteria which affect general health, i.e. Diphtheria Bacillus, streptocci, spirilla.

Predisposition Testing. Required by Federal Law prior to application of an aniline-derivative test.

Potential Hydrogen (pH) scale. Testimony of acidity and alakinity in topical products.

Sodium Hydroxide. Additive in hair straightener causing scalp burns and skin irritation.



Ex. #15

1/23/89

SB 179

Ethylene Glycol Dimethacrylate. May cause respiratory irritation. May irritate eyes, bonds skin. Hazardous if swallowed, will polymerize instantly (nail adhesive).

Hazardous decomposition of the products: carbon monoxide and hydrogen cyanide. Local exhaust required - mask suggested.

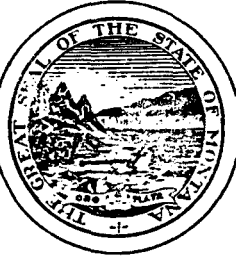
Nail Liquid: Ethyl Methacrylate, Ethylene glycol dimethacrylate, dimethyl P-toluidine, Hydroquinone methyl ether - if inhaled cause over exposure causes irritation of eyes, nose, respiratory tract, irritation. May cause central nervous system effects; dizziness, headaches, nausea, and loss of consciousness.

Glycerol Monomethacrylate - perm activator. Irritation to skin and eyes. May release hydrogen sulfide under thermal decomposition.

DEPARTMENT OF LABOR & INDUSTRY  
DIVISION OF WORKERS' COMPENSATION

EXHIBIT NO. 16  
DATE 1/23/89

BILL NO. SB 153  
MARGARET "PEG" CONDON BLDG.  
5 SO. LAST CHANCE GULCH



TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

HELENA, MONTANA 59601

*Shapiro*

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).

37-47-101

PROFESSIONS AND OCCUPATIONS

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(8) "Participant" means a person using the services offered by a licensed outfitter or professional guide.

**37-47-101. (Effective July 1, 1991) Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "License year" means that period commencing January 1 and ending December 31 of the same year.

(2) "Nonresident" means a person other than a resident.

(3) "Outfitter" means any person, except a person providing services on real property that he owns for the primary pursuit of bona fide agricultural interests, who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game and accompanies such a party or person on an expedition for any of these purposes;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) for consideration aids or assists any person in locating or pursuing any game animal.

(4) "Outfitters' council" means the Montana outfitters' council provided for in 2-15-1883.

(5) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment.

(6) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

(7) "Participant" means a person using the services offered by a license outfitter or professional guide.

History: Ap. p. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973; amd. Sec. 17, Ch. 9, L. 1977; Sec. 26-908, R.C.M. 1947; Ap. p. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; Sec. 26-904, R.C.M. 1947; R.C.M. 1947, 26-904(1), 26-908; amd. Sec. 1, Ch. 170, L. 1981; amd. Sec. 2, Ch. 545, L. 1981; amd. Sec. 1, Ch. 410, L. 1983; amd. Sec. 2, Ch. 528, L. 1987; Sec. 87-4-101, MCA 1985; redes. 37-47-101 by Sec. 11, Ch. 528, L. 1987.

**Compiler's Comments**

*1987 Amendment:* In introductory clause substituted "chapter" for "part"; inserted (1) and (2); deleted former (4) that read: "(4) 'Outfitters' council' means the Montana outfitters' council provided for in 2-15-3403"; and made minor grammatical change.

*Transfer of Agency:* Section 10, Ch. 528, L. 1987, provided: "Transfer of agency — name change — duties transferred. (1) The Montana outfitters' council is transferred to the department of commerce and is renamed the Board of outfitters.

(2) The authority and functions of the department of fish, wildlife, and parks regarding

licensing of outfitters and guides are transferred to the board of outfitters, and any reference in 87-4-122, 87-4-124, 87-4-125, 87-4-129, 87-4-131, and 87-4-143 to the department of fish, wildlife, and parks or to the department or director, meaning the department of fish, wildlife, and parks or the director of that department, is changed to the board, meaning the board of outfitters."

**Cross-References**

Outfitter to perform all activities listed under definition or a more restrictive special license, 37-47-308.

37-47-303

PROFESSIONS AND OCCUPATIONS

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person may apply for or hold an outfitter's license during any period of time in which a sentence has been deferred or suspended for a felony.

(10) have substantially complied with all board regulations and state and federal laws concerning outfitters and professional guides, if the applicant has previously held a license as an outfitter or professional guide.

*History:* En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(a) thru (3)(k); amd. Sec. 9, Ch. 545, L. 1981; amd. Sec. 8, Ch. 239, L. 1983; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-122, MCA 1985; redes. 37-47-302 by Sec. 11, Ch. 528, L. 1987.

**Compiler's Comments**

*1987 Amendment:* In introductory clause, after "shall", deleted "in the opinion of the

director"; and in (2) and (10) substituted "board" for "department".

**37-47-303. Professional guide's qualifications.** (1) An applicant for a professional guide's license shall meet the following requirements:

(a) be a person of at least 18 years of age who is physically capable and mentally competent to perform his duties as a professional guide;

(b) be endorsed and recommended by an outfitter with a valid license;

(c) have not been convicted or forfeited bond of \$100 or more on more than one violation of the fish and game laws or applicable regulations of the state of Montana or the United States within the past 5 years;

(d) have not committed any gross negligent act or misconduct while acting as a guide that caused an accident or injury to person or property of any client of an outfitter during the license year immediately preceding that for which the application is made;

(e) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. No person may apply for or hold a professional guide's license during any period of time in which a sentence has been deferred or suspended for a felony.

(2) A professional guide shall have been issued a valid wildlife conservation license.

*History:* En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(4), (5); amd. Sec. 10, Ch. 545, L. 1981; Sec. 87-4-123, MCA 1985; redes. 37-47-303 by Sec. 11, Ch. 528, L. 1987.

**37-47-304. Application.** (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the board which shall include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of his principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant, if an outfitter's license application is involved;

(d) the experience of the applicant, including years of experience as an outfitter or professional guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter by whom the professional guide is to be employed that the professional guide is in fact to be employed

by such outfitter and stating that the outfitter recommends the applicant for his qualifications;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant;

(g) a statement of the maximum number of guests to be taken at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands he will establish hunting camps.

(2) Applications for outfitter's license shall be in the name of an individual person only. Applications involving corporations or partnerships shall be made by one individual person who qualifies under the provisions of this part; any license issued pursuant thereto shall be in the name of that person; and the license shall specifically state that the same is issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued.

(3) Application shall be made to and filed with the board.

(4) Only one application for an outfitter's or professional guide's license may be made in any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(1), (2), (13); amd. Sec. 11, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-124, MCA 1985; redes. 37-47-304 by Sec. 11, Ch. 528, L. 1987.

#### Compiler's Comments

1987 Amendment: In introductory clause substituted "board" for "department"; and in (1)(f) and (3) substituted "board" for "director".

**37-47-305. Outfitter's examination.** Each applicant for an outfitter's license shall pass a standard examination administered by the board or its agent, which examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

- (1) federal and state fish and game laws and regulations;
- (2) practical woodsmanship;
- (3) general knowledge of big game;
- (4) field preparation of trophies;
- (5) care of game meat;
- (6) use of outfitter's gear as listed on the application;
- (7) knowledge of area and terrain;
- (8) knowledge of firearms;
- (9) federal and state regulations as applicable to outfitting;
- (10) first aid;
- (11) boat safety;

board shall issue either of the following licenses, depending upon its determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:

(a) a general license authorizing him to perform all the functions of an outfitter as that term is defined in 37-47-101; or

(b) a special license authorizing him to perform only the function of outfitting listed on the license.

(2) The license shall be in the form prescribed and shall be valid for the licensing year in which issued.

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license shall be issued upon reapplication thereof.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(1); amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-129, MCA 1985; redes. 37-47-308 by Sec. 11, Ch. 528, L. 1987.

**Compiler's Comments**

1987 Amendment: In (1) substituted "board" for "director" and "its determination" for "his determination"; and in (3) substituted "board" for "director".

**Cross-References**

Limit on application for an outfitter's or guide's license, 37-47-304.

**37-47-309. Professional guide's license.** (1) For the purposes of this part, a person may serve as a professional guide under his employer's license, after submitting his application with the proper license fee, until the license is issued or denied.

(2) To be valid, a professional guide's license must bear the signature and outfitter's license number of the endorsing outfitter and is valid only while the holder of such license is employed by the endorsing outfitter.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(2), (3); amd. Sec. 16, Ch. 545, L. 1981; Sec. 87-4-130, MCA 1985; redes. 37-47-309 by Sec. 11, Ch. 528, L. 1987.

**37-47-310. Transfer or amendment of outfitter's license.** (1) No outfitter's license may be transferred during any license year.

(2) An individual person may, upon proper showing, have his outfitter's license amended to indicate that he is holding the license for the use and benefit of a named partnership or corporation.

(3) Subject to approval by the board, the immediate members of the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure therefor.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(4); amd. Sec. 17, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-131, MCA 1985; redes. 37-47-310 by Sec. 11, Ch. 528, L. 1987.

**Compiler's Comments**

1987 Amendment: In (3) substituted "board" for "director".

**37-47-311. Limit one license.** No person may hold more than one outfitter's license either for his own benefit or for the use and benefit of a partnership or corporation, nor may the name of any partnership or corporation appear on more than one current outfitter's license.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(5); Sec. 87-4-132, MCA 1985; redes. 37-47-311 by Sec. 11, Ch. 528, L. 1987.

## DEPARTMENT

UNEMPLOYMENT INSURANCE DIVISION

PS 6

WORKERS'  
COMPENSATION

TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

P.O. Box 1728  
1327 Lockey  
Helena, MT 59624Benefits (406) 444-3783  
Contributions (406) 444-3834CERTIFIED MAIL

January 19, 1988

Mr. Norman H. Grosfield  
Utick & Grosfield, Attorneys at Law  
P.O. Box 512  
Helena, MT 59624Re: Paul Roos Outfitting  
S-981

Dear Mr. Grosfield:

As you know, the Department of Labor and Industry has been investigating the employment relationship between Paul Roos Outfitting and the guides performing services for the company.

As Paul Roos Outfitting considers the guides to be independent contractors, a Worker Relationship Questionnaire was submitted by the company, a contract used with the guides and a copy of an Independent Contractor Exemption from the Workers' Compensation Division.

Unemployment Insurance is not bound by the decisions of the Workers' Compensation Division. Workers' Compensation does not investigate the actual working relationship but depends on the contract of hire for their determination. While Workers' Compensation may have reviewed the contract and felt it could be an independent relationship, the contract does not contain all the aspects of the employment relationship. Therefore, the Unemployment Insurance Division investigated further and I have found an employment relationship to exist. My determination is based on the above documents and sections of Montana Code Annotated which pertain to Fish, Wildlife and Parks and Unemployment Insurance.

Section 87-4-101. Definitions. -

(5) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment.

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Section 87-4-122. Outfitters qualifications.

(2) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients.

Section 87-4-130. Professional guide's license.

(2) To be valid, a professional guide's license must bear the signature and outfitter's license number of the endorsing outfitter and is valid only while the holder of such license is employed by the endorsing outfitter.

Section 39-51-201 (14). General Definitions.

(14) "Independent Contractor" means an individual who renders service in the course of an occupation and;

- (a) has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact; and
- (b) is engaged in an independently established trade, occupation, profession, or business.

This statute clearly establishes a two-part test which must be met before an individual can be classified as an independent contractor. The absence of any factor results in subject employment.

The determination on the employment relationship is based on applying each "test" to the findings as follows:

Subsection (a) -

Under subsection (a), the individual shall be free from direction and control over the performance of his services. The outfitter is clearly given control of the guide by the statement above the outfitter's signature on the guide's license which reads "...and that I am responsible for his (the guide's) conduct and performance in field and camp."

The courts have held that it is the right of control, not merely the fact of control, that is the determining factor. Where the right to control exists, the fact of whether the employer finds it necessary to exercise such control may be unnecessary due to the nature of the work and the expertise of the worker. Since the guides are no doubt skilled at their profession, constant supervision would be unnecessary. The outfitter would retain the right to exert direction and control to the



extent necessary to ensure the satisfactory conduct of his business and to protect the general welfare of his clients. <sup>WORKERS'</sup> <sup>COMPENSATION</sup>

The fact that an outfitter must sign a guide's license stating that he will employ the guide is a further indication on control.

According to the definition of a professional guide, they cannot supply facilities, transportation or equipment. Further, under the outfitter's qualifications, equipment and facilities must be provided. The outfitter stated that the guides supplied their own equipment. To be in conformity with the Fish, Wildlife and Parks law, the outfitter must supply the equipment and by doing such, this would be a further indication of control over the worker.

The outfitter has the right to terminate the working relationship at any time. It might be difficult to reach the guide but the right to terminate the relationship is still existent. By signing the guide's license, the outfitter is stating that he is responsible for the guide's conduct and performance in the field and camp. This indicates that if his conduct or performance was not appropriate in field or camp, the outfitter could take measures to correct it; termination being one possibility.

The outfitter books reservations and makes the arrangements with the clients. By doing this, the outfitter has control of the guide by determining which days he must hunt, the number of clients, and any other arrangements the client has requested that the guide be responsible for.

It was noted on the Worker Relationship Questionnaire that the guides are given "limited training as to the policies of the firm." This would indicate that the firm had control over the worker and the methods the worker could use.

From the information above, we conclude the requirement of subsection (a) has not been met with regard to services performed by the guides.

Subsection (b) -

The evidence submitted does not show the services performed by the guides are that of an independently established business. I have found:

The guide cannot have an independently established business. He cannot set up a business on his own as he

would have to be a licensed outfitter to do this. The WORKERS' COMPENSATION guide cannot legally book hunts, take people on hunts, or deal with the customer without being an outfitter.

This evidence concludes that the requirements in subsection (b) cannot be met.

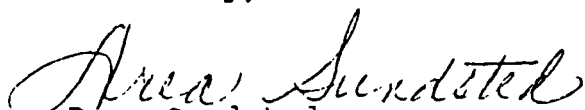
I would also like to note that the Fish, Wildlife and Parks section of Montana Codes Annotated refers constantly to the guide being employed by the outfitter. Also, on the Application for Professional Guide's License under the section of Endorsement of Employing Outfitter, it states "I will employ this applicant as a professional guide..."

In the case of outfitting for fishing trips where the guides provide the majority of the large equipment (rafts, transportation), the Unemployment Insurance Division has been allowing the outfitting business to take a seventy-five percent equipment rental deduction from the reportable wages of the guides.

Based on the foregoing information, it is the determination of the Unemployment Insurance Division of Montana that the services performed by the guides are in covered employment. All wages paid to the guides are reportable to and taxable by this Division.

Should you have any information which would alter this determination, please submit it in writing within 10 days from the date of this letter. If we have not received a rebuttal from you within 10 days, this determination will become final.

Sincerely,

  
Drea Sundsted  
Status Unit Supervisor

File I.D.4

### INDEPENDENT CONTRACTOR SUMMARY

This is a summary of the law regarding independent contractors as seen by the Division of Workers' Compensation. Generally, this status is determined on a case-by-case basis but the law does provide some definitions and guidelines.

The term "independent contractor" is defined at Section 39-71-120, MCA, as:

"An 'independent contractor is one who renders service in the course of an occupation and:

- "(1) has been and will continue to be free from control or direction over the performance of the service, both under his contract and in fact; and
- "(2) is engaged in an independently established trade, occupation, profession, or business."

One of the basic cases in defining the existence of an independent contractor is the case of Sharp v. Hoerner-Waldorf Corp., and Aetna Casualty, 178 Mont. 419, 584 P.2d 1298 (1978). In this case the Court set out four factors regarding the right of control for consideration in determining the independent contractor status. Those factors are: (1) direct evidence of the right or exercise of control over performance of the services; (2) the method of payment; (3) the furnishing of equipment; and (4) the right to fire. The Court further discussed these factors in Solheim v. Tom Davis Ranch and State Fund, 41 St.Rep. 326 (1984). In this case, the Court explained first that the evidence of right or exercise of control would indicate independent contractor status where the worker would substantially control the performance of his services and the hiring party would only give general directions as to the result expected. The method of payment factor would indicate independent contractor status where payment was made upon completion of the entire contract or large segments thereof, rather than on a time basis. The factor of furnishing of equipment indicates an employment relationship when an employer furnishes most of the valuable equipment to complete the job. However, the Court noted that where the worker supplies most of the valuable equipment to perform the job, it does not necessarily negate the employee status. Finally, the factor of the right to fire indicates the absolute power of control over an employee. Where a hiring agent can terminate a work relationship without liability for work to be performed on the balance of the project, then an independent contractor relationship is not established. If there were a contractual relationship, the worker would have a cause of action for breach of contract which an employee would not have. The case of Carlson v. Cain and Billings Gazette, 40 St.Rep. 865, 664 P.2d 913 (1983) also thoroughly discussed the foregoing factors.

It should be noted that not one of the factors discussed above is alone determinative of the issue. All of these factors must be weighed and balanced with the statutory definition in order to determine the independent contractor status. Obviously, some work relationships are more susceptible to prospective determinations of this status than are others.

We see four alternatives for an employer in dealing with workers assumed to be independent contractors. Those are: (1) do nothing, (2) require insurance by the contractor, (3) require an exemption for the contractor, (4) insure the contractor by rider on the employer's own policy. Of these alternatives, the first, "do nothing," is the least desirable. If at the time of an injury, a worker is determined to be an independent contractor, he will have to suffer his own uninsured loss but might perhaps find a cause of action in negligence against the employer. If at the time of the injury he were determined to be an employee, the insurer would have to pick up his claim and charge the employer for unpaid premiums during the entire period of employment. Given the decisions of the Workers' Compensation Court and Supreme Court in recent years, it is reasonably certain that where the point is at issue, the Court will do all it can to find that the injured worker is an employee so he may have the benefits of insurance coverage.

The other three alternatives should be acceptable means of dealing with an employer's risk, but policy considerations of the employer may establish one means as more desirable than the others. An employer might require that all independent contractors who wish to do business with it either obtain their own insurance coverage or an exemption, which, of course, would be at their expense. The employer may want to provide coverage through a rider on its own policy, which would designate this coverage as being for independent contractors only. This in fact might be the easiest method for both employers and insurers to administer, as it would eliminate the need for large numbers of applications for insurance or exemption from each contractor and the effort in verifying the same. Establishing a rider on an employer's policy, as in related matters, the Division has at all times maintained that such procedures are for workers' compensation purposes only and have no relation to determinations of status made for unemployment coverage, tax assessment and similar matters. It may be that if the issue arises, someone will point to this coverage as an indication of employee status, but the employer, of course, will point out that it was specifically designated as convenience coverage for independent contractors, along with other countervailing factors, including that the person actually functioned as an independent contractor.

The Legislature enacted the exemption from coverage for independent contractors in 1983. See the Division rules which become effective in July, 1984, for details on the requirements for obtaining this exemption.

DWC-2000t

DATE 1/23/89

PS 1 of 2

COMMITTEE ON Business & Industry

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SHAPPIE - Outfitters Bill				
witness				
SB 195 Jon Norton? diff				

