

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By REP. BOB BACHINI, CHAIRMAN, on January 17, 1991, at 8:00 A.M.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Stepler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: HB 22 was heard today and executive action taken on HB 22.

HEARING ON HOUSE BILL 22

Presentation and Opening Statement by Sponsor:

REP. DOROTHY CODY, HD 20, Wolf Point, Montana, sponsor, explained in the last session this Committee addressed a bill exempting a legal intern, paralegal, or legal assistant employed by a licensed attorney from licensure as a private investigator. HB 22 is an Act revising the exemption statute relating to licensure of private investigators and patrol officers to clarify that paralegals employed by one or more lawyers, law offices, agencies, or entities are exempt from licensure; amends 37-60-101

and 37-60-105, MCA, and provides an immediate effective date.

It is the intent of HB 22 to exempt from licensure a paralegal who works for one attorney or a group of attorneys, or several attorneys at the same time. The chairman of the Administrative Code Committee after the staff review of the 1989 statute decided that bill meant a paralegal could only work for one licensed firm at a time without being licensed as a private investigator. They also included in the stipulation a person had to have three years of experience and be 18 years old, which was not the intent of the 1989 bill. HB 22 states specifically what was intended in the last session: that paralegals are exempt from licensure when they work for one or more licensed attorneys at the same time.

Proponents' Testimony:

Barbara Nelson, CLA, Great Falls, is a member of the National Federation of Paralegal Associations, Inc. She believes it was the intent of the Legislature last session to define all paralegals, including free lance paralegals, as being a part of the legal system. They usually work under one or more attorneys. The attorney limits the investigation, is responsible and carries insurance. See EXHIBIT 1. The paralegal is told what to do. They would be penalized if they were required to obtain a license. That would cost the attorneys as well as the consumers. They perform different services for different attorneys. They feel HB 22 should be given a Do Pass recommendation.

REP. BRENT CROMLEY feels HB 22 would just carry out the intent of the statute which was passed in the 51st Legislature.

Max Suda, Tort Claims Division, State of Montana, supports HB 22. See his testimony EXHIBIT 2.

Opponents' Testimony:

Martin Mangan, Helena, is a licensed private investigator who has nine years experience. He is a former FBI investigator for the Montana Attorney General's office. The legislators in approximately 1971 started passing legislation covering the area of investigators in Montana to literally protect the public and people operating as investigators in the State. The difference in terms is that "a paralegal employed by a licensed attorney" shall be exempt from licensure. This was interpreted by the Board of Private Investigators and Operators to mean a paralegal could only work for one licensed firm at a time without being licensed. Rules were adopted to that effect. HB 22 addresses a person working for more than one licensed firm at the same time. There was a great deal of discussion in the 51st Legislature. Paralegals do not have to be licensed when working for one firm or employer at a time. If they obtain work for more than one employer, they would have to be licensed under the governing bill that covers private investigators in Montana.

You have to look at the activities, at what a person is doing. Paralegals should have to be reviewed and based on three years' experience or training to be able to get a license. At the present time there are eleven certified paralegals in the State. A certificate is obtained through talk or through licensure. Paralegals working for more than one firm should be licensed as investigators. He testified in opposition to HB 22.

Questions From Committee Members:

REP. McCULLOCH asked if legal firms do investigative work. Barbara Nelson said the work a paralegal would do would be different for each firm. In a personal injury case, the attorney would have them take measurement of skid marks, pictures of the roads, etc. It would be fact finding.

REP. PAVLOVICH asked what the cost of licenses for paralegals is. Ms. Nelson said they don't have to be licensed. Mr. Mangan advised at the present time there is a \$200 fee for licensed private investigators as set forth under the statute. The Board would set future fees for licensed paralegals.

REP. TUNBY asked if the law as it now reads meets with your approval? Mr. Mangan said for the past two years it has.

REP. PAVLOVICH asked REP. CODY if she carried the bill in the last session. She said she did not. HB 22 is to more clearly define the intent.

REP. BARNETT asked where the \$200 fee goes and how long is that license good for. Mr. Mangan said it covers processing of the application, and the two examinations that are given to obtain a license. The fee is collected by the department of commerce and distributed by them. He doesn't know where the \$200 goes. The license is renewed on an annual basis. Private investigator and paralegal licenses have to be renewed by December 1st of each year. The present renewal rate is \$25 a year. It varies.

REP. DOWELL asked what the difference between a free lance and paralegal would be. Mr. Mangan said paralegals are not licensed. Their activities are set by law. It is his and the Board's opinion that a free lance paralegal as set forth under present law should be licensed. One of the problems was defining "paralegal" which was used interchangeably. If their activities are such that they are doing investigative work covered by statute, they should have to obtain the same license as private investigators do. They started in 1971 to upgrade their private investigator profession.

REP. BARNETT asked if she did investigative work. Ms. Nelson said she would have already met with the attorney and the client and would know what she is to look for when doing the investigation. The attorney she works for pays any license fee, but paralegals are not required to be licensed at this time.

REP. BARNETT asked if she was performing the same type of duties without a license as those who are paying the \$200 fee. Ms. Nelson said they do fact finding work, legal research briefing, photographing skid marks. The private investigators do most of the surveillance, or follow someone.

REP. BARNETT asked if that were written into law, would she be able to do that. Ms. Nelson explained they have to work under the direction of an attorney. They work under the State Bar's rules so if asked to follow someone, she would, but that would be done under the direction of an attorney.

REP. DOWELL asked if he could hire a free lance paralegal to do work for him. Ms. Nelson said that would be against the law. Paralegals don't advertise like private investigators do. That would be practicing law and would be against what they are for. Colonel Bob Griffith has just been appointed to the Board of Security and Private Investigators. The \$200 pays for the Board's expenses. Paralegals should be licensed as private investigators or not do work as private investigators.

REP. SONNY HANSON thought he might be violating the law since he investigates fires, and does a lot of work for attorneys as a consulting engineer. Is the law broad enough to include such activities? Col. Griffith didn't think so. Anyone doing investigative work should be licensed.

REP. TUNBY asked if he thought this law would increase the burdens on that Board. Col. Griffith didn't think so. They field complaints from the public regarding investigative and security people.

REP. TUNBY asked what the negatives associated with that are. Why do you not want to be licensed? Ms. Nelson explained it would be unfair to the free lance paralegals. The expense of the license would cost the attorney she works for and ultimately the consumer. The paralegals have no representatives on that Board, so they have no representation.

REP. KILPATRICK asked if a paralegal working for one lawyer cannot go to work for another one also. Ms. Nelson said a free lance paralegal could work for more than one firm at the same time.

REP. PAVLOVICH asked if a paralegal investigator thinks there are some plusses on both sides of this issue. Also, should a paralegal do the function of investigation. The scope of this is pretty narrow as it is now written when the language says a paralegal cannot work for two attorneys at the same time. A free lance paralegal takes statements, records them and gives them to the attorney. A paralegal working for one firm is under control of the firm and doesn't have to have a license.

REP. LARSON reminded paralegals do not hold themselves out to the

public. Ms. Nelson can only work for one attorney. It is a safeguard for the public because their work is protected by an attorney's supervision.

Mr. Mangan said private investigators also work for and under the supervision of attorneys. Ninety-five of his clients throughout Montana are attorneys and they set forth parameters of the area they want. The problem arises when individuals, whether they call themselves investigators or paralegals, are out working for more than one firm. He has no problem with them working for one firm. There are paralegals who advertise their profession who are not licensed but do investigations for several firms. They have not been required to demonstrate to any agency their competency to do such work.

Closing by Sponsor:

REP. CODY closed saying this was an interesting hearing. REP. PAVLOVICH had asked to enter EXHIBIT 3 into the record. In the law under the section defining paralegal, and the section defining private security guard, it is spelled out as something that was not intended to be in the rules. It is not whether they can pay the \$200 fee or not, the question is what did that Committee intend. As passed it intended to exempt all paralegals from licensure no matter how many firms they worked for.

EXECUTIVE ACTION ON HOUSE BILL 22

REP. STELLA JEAN HANSEN moved HB 22 DO PASS.

Discussion:

REP. PAVLOVICH asked if the word should have been plural so they could do work for more than one firm. Paul Verdon, Researcher, said the rules of statute 102-105(3) says the singular includes the plural and the plural includes the singular. The statute says: "follow rules, the present tense includes the future, neutral plural and singular".

REP. BENEDICT said the intention of the statute is to make certain private investigators are addressed in this. This could be a semantics problem.

REP. KILPATRICK asked what the lawyers think. REP. CROMLEY said large firms have several paralegals around the State. A paralegal really cannot practice in the public, they are mainly assistants to a lawyer. If they advertised to the public they would be practicing law; that would be a private investigator. The definition of paralegal is excellent: A "paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by one or more lawyers, law offices, governmental

agencies, or other entities or who may be authorized by administrative, statutory, or court authority to perform this work." A paralegal out of work might do some work like measuring skid marks or fill out an investigating officer's report.

REP. SCOTT has no problems with the bill, but it has brought up another problem. He agrees with REP. CODY this is a battle over classification of territory, and whether this bill is passed or not, it is not going to address that problem. It is a territorial problem. This bill does nothing but clarify something that was the intent in the last session.

REP. STELLA JEAN HANSEN thinks it should not be defined so narrowly they cannot operate effectively. A private investigator should pay that fee. Where the two conflict they are going to have to work it out. Paralegals have to be trained to do the job for a lawyer. That is only working within the scope of the job.

REP. WALLIN asked if lawyers are licensed. REP. CROMLEY advised they are licensed under the Supreme Court. He is in favor of the testing, and renewal of the license every year. A paralegal can work for him, and does not have to be licensed.

REP. PAVLOVICH said the other bill was brought in by the Code Committee. HB 22 clears up what the Code Committee tried to do which is to clear up language.

REP. CODY stated the State of Montana intent was you can have your bill and your intent, but the Rules Committee has the rules making authority and their own conception of what was intended. You won't know the bill after they come up with their interpretation of it.

Vote: Motion to DO PASS HB 22 was unanimously adopted by voice vote.

ADJOURNMENT

Adjournment: 10:00 a.m.



REP. BOB BACHINI, CHAIRMAN



JO LAHTI, SECRETARY

BB/jl

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HOUSE STANDING COMMITTEE REPORT

January 17, 1991

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Mr. Speaker: We, the committee on Business and Economic
Development report that House Bill 22 (first reading copy --
white) do pass .

Signed: Bob Bachini
Bob Bachini, Chairman

WRITTEN TESTIMONY OF
THE NATIONAL FEDERATION OF PARALEGAL ASSOCIATIONS, INC.
TO THE HOUSE BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE
THE HONORABLE BOB BACHINI, CHAIRMAN

JANUARY 16, 1991
HELENA, MONTANA

* * * * *

Chairman Bachini, Members of the Committee:

Thank you for allowing the National Federation of Paralegal Associations, Inc. ("NFPA") to present this written testimony on House Bill No. 22.

Founded in 1974, the NFPA is the oldest and largest non-profit professional association and represents over 17,000 paralegals nationwide. The NFPA affirms the paralegal profession as an independent, self-directed profession which supports increased quality, efficiency and accessibility in the delivery of legal services. In addition, it promotes the growth, development and recognition of the profession as an integral partner in the delivery of legal services.

On January 31, 1989, the NFPA submitted written testimony supporting House Bill No. 326 which was enacted in Section 2, Chapter 332, Laws of 1989, and exempted "a legal intern, paralegal, or legal assistant employed by a licensed attorney" from licensure as a private investigator.

The NFPA recently became aware of the Board of Private Security Patrol Officers and Investigator's interpretation of Rule 8.50.423, Administrative Rules of Montana, which interpreted the license exemption for paralegals to apply to "a paralegal

employed by only one law firm" and required that paralegals "employed by more than one firm at the same time" be licensed as private investigators. On May 15, 1990, the NFPA submitted information to Clayton Bain, a member of the Board of Private Security Patrol Officers and Investigators stating its belief the addition of Item (7) on page 2 set forth below does not accurately reflect the intent of the Montana Legislature when it defined a paralegal.

(7) For the purposes of applying Section 37-60-101(12), MCA, and 37-60-105(4)(b), MCA, the word "paralegal" will be interpreted to mean a paralegal employed by only one law firm. Paralegals employed by more than one firm at the same time will be required to be licensed under Title 37, Chapter 60, MCA.

If Rule 8.50.423 is implemented the effect will be to penalize small firms and sole practitioners who cannot afford to hire paralegals as full-time employees. If freelance paralegals are required to obtain a license, the effect will be increased cost to the attorneys that employ them as well as the consumer. We believe that to penalize attorneys and consumers utilizing the services of freelance paralegals violates the spirit of the law as adopted.

It is not uncommon for freelance paralegals to perform different services for attorneys for whom they are simultaneously employed, i.e., a freelance paralegal could be performing investigative work for one attorney and organizing documents for another attorney. The Rule as proposed would require the freelance paralegal to obtain a private investigators license to provide services to both attorneys even though the freelance

paralegal is not performing investigative functions on a full-time basis.

The definition set forth in House Bill No. 326 as signed by the Governor, is the definition adopted by the NFPA at its Annual Meeting in March of 1987 as follows:

A paralegal/legal assistant means a person qualified through education, training or work experience to perform substantive legal work, that requires knowledge of legal concept and that is customarily but not exclusively performed by a lawyer. This person may be retained or employed by a lawyer, law office, governmental agency or other entity or may be authorized by administrative, statutory or court authority to perform this work.

This definition, although quite broad in nature, is intended to reflect the diversity of paralegals. The intent of the NFPA was not to exclude independent/freelance paralegals who generally provide services directly under the supervision of an attorney. The NFPA respectfully submits that the attorney or other entity or agency, through whom the legal assistant provides services, is fully liable to the client and to the public for all investigatory work performed by that individual.

Legal assistants perform tasks delegated to them by attorneys. In nearly every practice area, paralegals perform services for attorneys that could be construed as some type of investigative activity. The American Bar Association Code of Professional Responsibility in Canons of Judicial Ethics states:

. . . such delegation is proper if the lawyer maintains a direct relationship with his client, supervises the delegated work, and has complete professional responsibility for the work product.

The scope of the tasks that a paralegal may perform are outlined in Opinion 316 of the American Bar Association's Committee on Professional Ethics. The Opinion reads as follows:

We do not limit the kind of assistance that a lawyer can acquire in any way to persons who are not admitted to the Bar, so long as the non-lawyers do not do things that lawyers may not do or do the things that lawyers only may do.

The economic advantages derived from employing legal assistants are becoming widely known within the legal and business communities. At a time when clients are concerned about the delivery of cost effective legal services, attorneys are using paralegals to perform tasks -- including investigations requisite with the prosecution or defense for client's case -- once accomplished by associates. Through the use of legal assistants, law offices, corporations, government agencies, public law offices, etc. are able to provide their clients with a higher caliber of work product at a lower cost.

The NFPA believes that it was the intent of the Fifty-first Legislature by adopting the definition of "paralegal" in Section 37-60-101(12) MCA was to define all paralegals including freelance paralegals. We further believe it was not the intent of the Legislature to require freelance paralegals to obtain a private investigators license in order to provide services to

Ex. 1
1-17-96

HB 22

more than one attorney. It is with this background that the NFPA respectfully requests and urges the favorable passage of House Bill No. 22.

Respectfully submitted,

Jolene C. Miller

Jolene C. Miller, President

WITNESS STATEMENT

NAME MAX SUDA BILL NO. HB 22
ADDRESS ~~Box~~ Tort Claims Division, Room 111 Mitchell
WHOM DO YOU REPRESENT? Tort Claims Division
SUPPORT OPPOSE AMEND

COMMENTS: Paralegals are qualified by education, training and/or experience to perform substantive legal work which includes investigation. Paralegals should be exempted from licensure as private investigators as provided by sec 2 ch 332, 1989. ~~and~~ The private security patrol officers interpretation of Rule 8.50.423 ARM is to interpret the exemption as exempting only paralegals employed by one attorney is inconsistent with legislative intent and with the logic of exemption of paralegals from the need to be licensed ~~as~~ investigators. If a paralegal is qualified to investigate for a single attorney, they are qualified to work for more than one attorney. Paralegals are adequately supervised in their investigativ^e capacity by the attorney/attorneys they work for ~~or~~

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

**AFFIDAVIT OF REPRESENTATIVE ROBERT J. PAVLOVICH
MONTANA DISTRICT #70**

STATE OF MONTANA)
: ss.
County of Silver Bow)

I, Robert J. Pavolovich, being first duly sworn upon oath, depose and state as follows:

1. That I am the Representative for House District #70 for the State of Montana.

2. That I was the Chairman of the House Committee on Business and Economic Development for the 51st Legislative Assembly.

3. That on January 31, 1989, the Business and Economic Development Committee heard and received testimony on House Bill 326 from the following: Carol Bronson, Great Falls; Lori Johns, Deer Lodge; Becky Copple, Billings; Sue Weingartner, Montana Defense Trial Lawyers; Mike Sherwood, Montana Trial Lawyers Association; Jolene Miller, National Federation of Paralegal Association; Karen Judd, President of NALA; Clayton Bain, Helena; M.T. Mangan, Helena; Mark Pfgetzger, Great Falls.

4. That it was decided unanimously by the Committee that a statute must be added to the code defining "paralegal" "legal assistant."

5. That while deciding upon a definition to serve the purpose, it was unanimously decided that the word "retained" should also be included within the definition so that it would be broad enough to clearly cover free-lance paralegals.

Ex. 3
1-17-91
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Page 2
Affidavit
Representative Robert Pavlovich


6. That Section 37-60-101(12) M.C.A. reads as follows:

(12) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by a lawyer, law office, governmental agency, or other entity or who may be authorized by administrative, statutory, or court authority to perform this work. (Emphasis added)

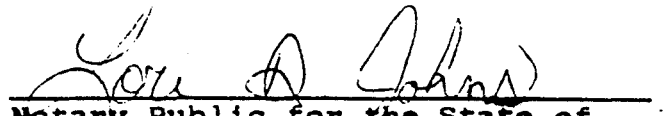
7. That the intent of the 51st Legislature by adopting the definition of "paralegal" "legal assistant" in Section 37-60-101(12) M.C.A. was to define all paralegals including free-lance paralegals.

8. That pursuant to this statute and the intent of the 51st Legislature, free-lance paralegals also fall within Section 37-60-105(4)(b) M.C.A.

DATED this 16th day of May, 1990.


REPRESENTATIVE ROBERT PAVLOVICH

SubScribed and sworn to before me this 16th day of May, 1990.


Notary Public for the State of Montana. Residing at Butte, MT
My Commission Expires: 7-10-92

VISITORS' REGISTER

Business & Econ Dev. COMMITTEE

BILL NO. HB 22

DATE Jan. 17, 1991

SPONSOR Rep. Cody

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
MAX SUDA	TURT CLAIMS DIVISION HELENA 59620-0124	✓	
Martin Mangin	Helena, MT		✓
Barbara Nelson	Great Falls, MT	✓	
FRED VALITON	HELENA		✓

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.