

HOUSE BILL 406

Introduced by Daily

1/26	Introduced
1/26	Referred to Education & Cultural Resources
1/26	First Reading
1/26	Fiscal Note Requested
1/31	Fiscal Note Received
2/04	Fiscal Note Printed
2/26	Rereferred to Appropriations
3/20	Hearing
3/22	Tabled in Committee

1 House BILL NO. 406
 2 INTRODUCED BY Andy
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO TRANSFER THE
 5 ADMINISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS
 6 FROM THE DEPARTMENT OF COMMERCE TO THE COMMISSIONER OF
 7 HIGHER EDUCATION; AMENDING SECTIONS 20-30-101, 20-30-103,
 8 20-30-105, 20-30-201, 20-30-202, 20-30-203, 20-30-301,
 9 20-30-302, 20-3-303, 20-30-304, 20-30-305, 20-30-306,
 10 20-30-401, 20-30-403, AND 20-30-405, MCA; REPEALING SECTIONS
 11 2-15-1804 AND 20-30-104, MCA; AND PROVIDING AN EFFECTIVE
 12 DATE."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 NEW SECTION. **Section 1.** Administration of
 16 postsecondary educational institutions transferred from
 17 department of commerce to commissioner of higher education.
 18 (1) The functions of the department of commerce in
 19 administering the postsecondary educational institutions in
 20 Title 20, chapter 30, are transferred to the commissioner of
 21 higher education.

22 (2) Unless inconsistent with [this act], any reference
 23 to "department of commerce" or "department" in Title 20,
 24 chapter 30, or in material enacted by the 52nd legislature
 25 intended to be codified in Title 20, chapter 30, is changed

1 to "commissioner of higher education" or "commissioner".

2 **Section 2.** Section 20-30-101, MCA, is amended to read:

3 "20-30-101. Legislative purpose and definitions. (1) It
 4 is the policy of this state to encourage and enable its
 5 citizens to obtain and receive an education commensurate
 6 with their abilities and desires. It is recognized that
 7 institutions offering postsecondary educational, vocational,
 8 and professional instruction perform a useful and necessary
 9 service to the citizens of the state in achieving this
 10 objective. It is found that certain institutions have either
 11 by unscrupulous, unfair, and deceptive practices or through
 12 substandard instruction deprived the citizens of this state
 13 of educational opportunity and subjected them to financial
 14 loss. The actions of such institutions also reflect
 15 unfavorably upon the reputable postsecondary institutions
 16 which are in the great majority. Thus it is the purpose of
 17 this chapter to provide for the protection, education, and
 18 welfare of the citizens of this state.

19 (2) As used in this chapter, unless the context clearly
 20 indicates otherwise, the following definitions apply:

21 (a)--"Advisory-council"-or-"council"-means-the--advisory
 22 council-created-by-2-15-1804-

23 (b)(a) "Agent" means any person owning any interest in,
 24 employed by, or representing a postsecondary educational
 25 institution in this or another state who, by solicitation in

1 any form made in this state, seeks to enroll or enrolls a
 2 resident of this state in such postsecondary institution or
 3 who offers to award educational credentials on behalf of
 4 such institution for remuneration or who holds himself out
 5 to the residents of this state as representing a
 6 postsecondary institution for any such purpose.

7 {c}{b} "Application" means either an application for
 8 the initial issuance of a license or permit or for the
 9 renewal of a license or permit.

10 {d}{c} "Department" "Commissioner" means the department
 11 of--commerce commissioner of higher education provided in
 12 2-15-1506.

13 {e}{d} "Education or educational services" means a
 14 class, course, or program of training, instruction, or
 15 study.

16 {f}{e} "Educational credential" means a degree,
 17 diploma, certificate, transcript, report, document, letters
 18 of designation, marks, appellations, series of letters,
 19 numbers, or words which signify, purport, or are generally
 20 taken to mean enrollment, attendance, progress, or
 21 satisfactory completion of the requirements or prerequisites
 22 for education through a postsecondary educational
 23 institution.

24 {g}{f} "Grant" means sell, award, confer, bestow, or
 25 give.

1 {h}{g} "Institution" means an academic, vocational,
 2 technical, home study, business, professional, or other
 3 school, college, or university or any person, association,
 4 or corporation offering educational credentials or
 5 educational services but does not include any institution
 6 established and maintained under the laws of this state.

7 {i}{h} "License" means written approval issued by the
 8 department commissioner to operate or to contract to operate
 9 a postsecondary institution in this state.

10 {j}{i} "Offer" means, in addition to its usual meaning,
 11 to advertise, publicize, solicit, or encourage any person,
 12 directly or indirectly, in any form, to perform the act
 13 described.

14 {k}{j} "Operate" means to establish and maintain any
 15 facility in this state for the purpose described and
 16 includes a contract with any person, association, or
 17 corporation to establish and maintain such facility.

18 {l}{k} "Permit" means written approval issued by the
 19 department commissioner to any person to act as an agent for
 20 a postsecondary educational institution.

21 {m}{l} "Postsecondary education" means the education or
 22 educational services offered to persons who have completed
 23 or terminated their secondary education or who are beyond
 24 the age of compulsory school attendance, for the attainment
 25 of academic, professional, or vocational objectives."

1 **Section 3.** Section 20-30-103, MCA, is amended to read:

2 "20-30-103. Administration. The department commissioner
3 shall administer this chapter. To effect the purposes of
4 this chapter, the department commissioner may request from
5 any agency of the state and every agency shall provide such
6 information as that will enable the department commissioner
7 to exercise properly its his powers and perform its his
8 duties. Nothing herein--shall in this section may be
9 construed to interfere with the purpose and function of any
10 agency of the state."

11 **Section 4.** Section 20-30-105, MCA, is amended to read:

12 "20-30-105. Preservation of records. (1) In the event
13 any postsecondary educational institution now or hereafter
14 located in this state proposes to discontinue its operation,
15 the chief administrative officer, by whatever title
16 designated, of such the institution shall ~~cause-to-be-filed~~
17 file with the department commissioner the original or
18 legible true copies of all such the academic records of such
19 the institution as may be specified by the department
20 commissioner. Such The records ~~shall must~~ include, at a
21 minimum, such the academic information as is customarily
22 required by colleges when considering students for transfer
23 or advanced study and, as a separate document, the academic
24 record of each former student.

25 (2) In the event it appears to the department

1 commissioner that any such records of an institution
2 discontinuing its operations are in danger of being
3 destroyed, secreted, mislaid, or otherwise made unavailable,
4 the department commissioner may seize and take possession of
5 such the records on its his own motion and without order of
6 court. The department commissioner shall maintain or cause
7 to be maintained a permanent file of such the records coming
8 into its his possession."

9 **Section 5.** Section 20-30-201, MCA, is amended to read:

10 "20-30-201. Powers and duties of department
11 commissioner. To administer this chapter, the department
12 commissioner shall have the following powers and duties:

13 (1) to establish minimum criteria, ~~in-consultation-with~~
14 ~~the--commissioner--of--higher--education~~, conforming to the
15 minimum standards in 20-30-202, which applicants for a
16 license or permit shall satisfy before a license or permit
17 ~~shall may~~ be issued, provided the requirements of the
18 Montana Administrative Procedure Act for rulemaking
19 procedures have been complied with;

20 (2) to receive, to investigate as ~~it--may--deem he~~
21 considers necessary, and to act upon applications for a
22 license or permit;

23 (3) to maintain a list of licensed institutions, of
24 persons possessing permits, and of accrediting agencies
25 recognized under 20-30-102(1), provided that an institution

1 and its agent exempt from this chapter may be included in
2 such list upon the filing of an affidavit of exemption;

3 (4) to negotiate and enter into reciprocal interstate
4 agreements with ~~like~~ officers or agencies in other states if
5 such the agreements are or will affect the purposes of this
6 chapter, provided that nothing contained in such the
7 agreement ~~shall~~ may be construed as limiting the powers and
8 duties of the department commissioner with respect to
9 investigating or acting upon any application for a license
10 or for a permit or with respect to the enforcement of any
11 provision of this chapter or regulations adopted hereunder
12 under this chapter;

13 (5) to receive and ~~cause-to-be-maintained~~ maintain for
14 a reasonable length of time, not less than 10 years, copies
15 of academic records pursuant to 20-30-105;

16 (6) to establish, ~~with the advice of the advisory~~
17 council, rules and procedures necessary for the
18 implementation of this chapter ~~which shall~~ that have the
19 force of law, provided the requirements of the Montana
20 Administrative Procedure Act for rulemaking procedures have
21 been complied with, and to hold hearings as ~~it may deem~~ he
22 considers advisable in developing such rules and procedures
23 or to aid in any investigation or inquiry; and

24 (7) to investigate as ~~it may deem~~ he considers
25 necessary, on ~~its~~ his own motion or on the filing of a

1 verified complaint filed with ~~it~~ him, any institution or
2 person subject to or reasonably believed by the department
3 commissioner to be subject to the provisions of this
4 chapter;

5 (8) to subpoena issue subpoenas, enforceable in a
6 district court of this state, to any persons or for
7 documents pertaining to such the investigation, ~~which~~
8 ~~subpoenas shall be enforceable in a district court of this~~
9 ~~state;~~

10 (9) to require answers in writing under oath to
11 questions or interrogatories propounded by the department
12 commissioner; and

13 (10) to administer an oath or affirmation to any person
14 in connection with any investigation."

15 **Section 6.** Section 20-30-202, MCA, is amended to read:

16 "20-30-202. Minimum standards. (1) In establishing the
17 criteria required by 20-30-201, the department commissioner
18 shall observe and ~~shall~~ require compliance with the
19 following minimum standards:

20 (a) A postsecondary educational institution must be
21 maintained and operated or, in the case of a new
22 institution, it must demonstrate that it can be maintained
23 and operated in compliance with the following minimum
24 standards:

25 (i) that the quality and content of each course or

1 program of instruction, training, or study ~~are such--as~~ may
2 reasonably and adequately achieve the stated objective for
3 which the course or program is offered;

4 (ii) that the institution has adequate space, equipment,
5 instructional materials, and personnel to provide education
6 of good quality;

7 (iii) that the education and experience qualifications
8 of directors, administrators, supervisors, and instructors
9 are such as may reasonably insure ensure that the students
10 will receive education consistent with the objectives of the
11 course or program of study;

12 (iv) that the institution provides students and other
13 interested persons with a catalog or brochure containing
14 information describing the programs offered; program
15 objectives; length of program; schedule of tuition, fees,
16 and all other charges and expenses necessary for completion
17 of the course of study; cancellation and refund policies;
18 and ~~such~~ other material facts concerning the institution and
19 program or course of instruction as are reasonably likely to
20 affect the decision of the student to enroll therein,
21 together with any other disclosures required by the
22 department commissioner, and that ~~such~~ the information is
23 provided to prospective students prior to enrollment;

24 (v) that upon satisfactory completion of training, the
25 student is given appropriate educational credentials by the

1 institution, indicating that the course or courses of
2 instruction or study have been satisfactorily completed;

3 (vi) that adequate records are maintained by the
4 institution to show attendance, programs, or grades and that
5 satisfactory standards are enforced relating to attendance,
6 progress, and performance;

7 (vii) that the institution is maintained and operated in
8 compliance with all pertinent ordinances and laws relating
9 to the safety and health of all persons upon the premises;

10 (viii) that the institution is financially sound and
11 capable of fulfilling its commitments to students;

12 (ix) that neither the institution nor its agents engage
13 in advertising, sales, collection, credit, or other
14 practices of any kind which that are false, deceptive,
15 misleading, or unfair;

16 (x) that the chief executive officer, trustees,
17 directors, owners, administrators, supervisors, staff, and
18 instructors are of good reputation and character; and

19 (xi) that the institution has a fair and equitable
20 cancellation and refund policy.

21 (b) An applicant for a permit to act as agent ~~shall~~
22 must be an individual of good reputation and character and
23 ~~shall~~ represent only a postsecondary educational institution
24 which that meets the minimum standards established in this
25 section and the criteria established under 20-30-201.

1 (c) No A postsecondary educational institution may not
 2 use the term "university" or "college" without authorization
 3 to do so from ~~the department in consultation with~~ the
 4 commissioner ~~of higher education~~; provided that any
 5 institution subject to this chapter located within this
 6 state which that used either term on January 1, 1974, may
 7 continue to do so by filing an affidavit to that effect with
 8 the department commissioner prior to January 1, 1975.

9 (2) Accreditation by national or regional accrediting
 10 agencies recognized by the United States office of education
 11 may be accepted by the department commissioner as evidence
 12 of compliance with the minimum standards established
 13 hereunder in this section and the criteria established under
 14 20-30-201, provided ~~the department~~, ~~after conferring with~~
 15 the commissioner ~~of higher education~~, may require such
 16 further evidence and make such further investigation as in
 17 ~~its~~ his judgment may be necessary. Accreditation by a
 18 recognized, specialized accrediting agency may be accepted
 19 as evidence of such compliance only as to the portion or
 20 program of an institution accredited by such agency if the
 21 institution as a whole is not accredited."

22 **Section 7.** Section 20-30-203, MCA, is amended to read:

23 "20-30-203. Acts prohibited without permit or license.
 24 No person, group, association, or corporation, alone or in
 25 concert with others, shall:

1 (1) operate in this state a postsecondary educational
 2 institution unless the institution is exempt from the
 3 provisions of this chapter or is licensed by the department
 4 commissioner;

5 (2) offer instruction in, enrollment in, or grant of
 6 educational credentials as or through an agent by a
 7 postsecondary educational institution not exempted from this
 8 chapter, whether within or without the state, unless the
 9 agent possesses a currently valid permit as required by this
 10 chapter;

11 (3) accept or receive contracts or applications for
 12 enrollment from an agent unless the agent possesses a
 13 currently valid permit as required by this chapter;

14 (4) offer education or educational services or educate
 15 or provide educational service, offer to enroll or enroll,
 16 contract or offer to contract with any person for such
 17 purpose or offer to grant, grant, or contract with any
 18 person for that purpose in this state unless the person,
 19 group, association, or corporation complies with the minimum
 20 standards in 20-30-202, the criteria established by the
 21 department commissioner, and the rules adopted by the
 22 department commissioner;

23 (5) act as an agent for a postsecondary educational
 24 institution unless currently possessing a valid permit from
 25 the department commissioner."

1 **Section 8.** Section 20-30-301, MCA, is amended to read:

2 "20-30-301. License to operate institution. (1) Each
3 postsecondary educational institution not exempted from this
4 chapter intending to operate or presently operating in this
5 state shall apply to the department commissioner for a
6 license to operate. Application ~~shall~~ must be made on forms
7 prescribed by the department commissioner. Each application
8 shall must be accompanied by the most recent catalog or
9 brochure published or intended to be published by the
10 institution. The application also ~~shall~~ must be accompanied
11 by evidence of payment of the fees required by this chapter.

12 (2) After review of the application and any further
13 information required by the department commissioner, any
14 investigation of the application which that the department
15 ~~may--deem~~ commissioner considers necessary or appropriate,
16 and evidence of a surety bond as required by this chapter,
17 the department commissioner shall either issue or not issue
18 a license to operate a postsecondary educational
19 institution. The license ~~shall-be~~ is nontransferable and may
20 be upon such terms and conditions as the department
21 commissioner may require.

22 (3) The license ~~shall~~ must be in a form prescribed by
23 the department commissioner and ~~shall~~ must state in a clear
24 and conspicuous manner at least the following information:

25 (a) date of issuance, effective date, and date of

1 expiration;

2 (b) the name and address of the institution licensed;

3 (c) the authority for and conditions of approval; and

4 (d) any terms or conditions required by the department
5 commissioner.

6 (4) No A license ~~shall-be~~ is not valid for more than 2
7 years and may be valid for a lesser period of time."

8 **Section 9.** Section 20-30-302, MCA, is amended to read:

9 "20-30-302. Permit to act as agent. (1) Each person
10 intending to act in this state as an agent for a
11 postsecondary institution not exempt from the provisions of
12 this chapter shall make application to the department
13 commissioner. Application ~~shall~~ must be made on forms
14 prescribed by the department commissioner. Each application
15 ~~shall~~ must be accompanied by evidence of payment of the fees
16 required by this chapter and the sworn affidavits of three
17 residents of this state as to the good character and
18 reputation of the applicant and ~~shall~~ must show the name and
19 address of the institution which the applicant intends to
20 represent.

21 (2) In the event the applicant intends to represent an
22 institution not licensed to operate in this state, the
23 application ~~shall~~ must be accompanied by the information
24 required of institutions applying for such a license.

25 (3) After review of the application and any further

1 information required by the department commissioner, any
 2 investigation deemed considered necessary or appropriate,
 3 and evidence of a surety bond required by this chapter, the
 4 department commissioner shall issue or not issue the permit
 5 to the applicant. The permit ~~shall be~~ is nontransferable and
 6 may be upon such terms and conditions as the department
 7 commissioner may require.

8 (4) The permit ~~shall~~ must be in the form prescribed by
 9 the department commissioner and ~~shall~~ must state in a clear
 10 and conspicuous manner at least the following information:

11 (a) the date of issuance, effective date, and date of
 12 expiration;

13 (b) the name and address of the agent;

14 (c) the name and address of the institution or
 15 institutions the agent may represent;

16 (d) the authority for and conditions of approval; and

17 (e) any terms or conditions required by the department
 18 commissioner.

19 (5) No A permit ~~shall be~~ is not valid for more than 2
 20 years and may be valid for a lesser period of time."

21 **Section 10.** Section 20-30-303, MCA, is amended to read:

22 "20-30-303. Denial of application for license or
 23 permit. (1) If the department commissioner determines that
 24 an application is deficient under the criteria established
 25 for the issuance of a license or permit, the department

1 commissioner shall notify the applicant in writing of that
 2 determination and the deficiencies.

3 (2) If the applicant requests and the request
 4 demonstrates to the department commissioner the applicant's
 5 intention and ability to remedy the deficiencies causing the
 6 denial of the license or permit, the department commissioner
 7 may grant the applicant a reasonable period of time to take
 8 such action.

9 (3) If a request under subsection (2) above is not
 10 made, or a request is made and is denied, or the period of
 11 time granted expires without remedy of the deficiencies, the
 12 application shall be denied. The department commissioner
 13 shall notify the applicant of the denial, the reasons
 14 therefor for the denial, and the opportunity of the
 15 applicant for a hearing before the department commissioner.

16 (4) In the event an application for a permit is denied,
 17 the department commissioner shall notify in writing the
 18 institution or institutions represented or to be represented
 19 by the applicant."

20 **Section 11.** Section 20-30-304, MCA, is amended to read:

21 "20-30-304. Revocation of license or permit. (1) If the
 22 department commissioner has reasonable cause to believe that
 23 a holder of a license or permit issued under any provision
 24 of this chapter has violated or is in violation of this
 25 chapter or criteria established under this chapter, the

1 department commissioner may revoke the license or permit as
2 provided.

3 (2) A decision respecting revocation of a license or
4 permit ~~shall~~ must be made after opportunity for hearing
5 before the department commissioner. Matters concerning the
6 revocation of licenses or permits, hearings, and judicial
7 review will be handled as contested cases under the Montana
8 Administrative Procedure Act."

9 **Section 12.** Section 20-30-305, MCA, is amended to read:

10 "20-30-305. Bond required. (1) At the time application
11 is made for license, the department commissioner may require
12 the postsecondary educational institution making the
13 application to file with the department commissioner a good
14 and sufficient surety bond in such a sum as may be
15 determined by the department commissioner. The bond ~~shall~~
16 must be executed by the applicant as principal and by a
17 surety company qualified and authorized to do business in
18 this state. The bond ~~shall~~ must be conditioned to provide
19 indemnification to any student or enrollee or his parent or
20 guardian, or class thereof, determined to have suffered loss
21 or damage as a result of any act or practice which that is a
22 violation of this chapter by the postsecondary educational
23 institution and that the bonding company shall pay any final
24 nonappealable judgment rendered by any court of this state
25 having jurisdiction upon receipt of written notification

1 thereof of the judgment. Regardless of the number of years
2 that the bond is in force, the aggregate liability of the
3 surety ~~thereon shall-in-no-event~~ on the bond may not exceed
4 the penal sum of the bond. The bond ~~shall~~ must be for 2
5 years or coterminous with the license.

6 (2) An application for a permit ~~shall~~ must be
7 accompanied by a good and sufficient surety bond in a penal
8 sum of \$1,000. The bond ~~shall~~ must be executed by the
9 applicant as principal and by a surety company qualified and
10 authorized to do business in this state. The bond may be in
11 blanket form to cover more than one agent for a
12 postsecondary educational institution, but it ~~shall~~ must
13 cover each agent for the institution in a penal sum of
14 \$1,000. The bond ~~shall~~ must be conditioned to provide
15 indemnification to any student, enrollee, or the parents or
16 guardian, or class thereof, determined to have suffered loss
17 or damage as a result of any act or practice which that is a
18 violation of this chapter by the agent and that the bonding
19 company shall pay any final nonappealable judgment rendered
20 by any court of this state having jurisdiction upon receipt
21 of written notification thereof of the judgment. Regardless
22 of the number of years that the bond is in force, the
23 aggregate liability of the surety ~~thereon-shall-in-no--event~~
24 on the bond may not exceed the penal sum thereof of the
25 bond. The bond ~~shall~~ must be for 2 years or coterminous with

1 the permit.

2 (3) The surety bond to be filed hereunder ~~shall~~ must
3 cover the period of the license or the permit except when a
4 surety is released. A surety on any bond filed under the
5 provisions of this section may be released after the surety
6 has served written notice to the department 40 days prior to
7 the release. The release does not discharge or otherwise
8 affect any claim filed by a student or enrollee or his
9 parent or guardian for loss or damage resulting from any act
10 or practice ~~which~~ that is a violation of this act alleged to
11 have occurred while the bond was in effect or from an
12 institution's ceasing operations during the term for which
13 tuition has been paid while the bond was in force.

14 (4) A license for an institution to operate or a permit
15 to an agent ~~shall~~ must be suspended by operation of law when
16 the institution or agent is no longer covered by a surety
17 bond as required by this section; but the department
18 commissioner shall cause the institution or an agent, or
19 both, to receive at least 30 days' written notice prior to
20 the release of the surety to the effect that the license or
21 permit ~~shall~~ must be suspended by operation of law until
22 another surety bond is filed in the same manner and like
23 amount as the bond being terminated."

24 **Section 13.** Section 20-30-306, MCA, is amended to read:
25 "20-30-306. Fees. All fees collected pursuant to the

1 provisions of this chapter ~~shall~~ must be deposited in the
2 general fund, and no fees collected under the provisions of
3 this chapter ~~shall-be~~ are subject to refund. The fees to be
4 collected by the ~~department---~~ shall commissioner must
5 accompany an application for authorization to operate or for
6 an agent's permit, in accordance with the following
7 schedule:

- 8 (1) The initial application fee for a license ~~shall--be~~
9 is \$50.
10 (2) The renewal fee for a license ~~shall-be~~ is \$25.
11 (3) The initial fee for permit ~~shall-be~~ is \$25.
12 (4) The renewal fee for permit ~~shall-be~~ is \$10."

13 **Section 14.** Section 20-30-401, MCA, is amended to read:
14 "20-30-401. Civil relief. Any person claiming loss or
15 damage as a result of any act or practice by a postsecondary
16 institution or its agent, or both, which act or practice
17 violates the criteria established by the department
18 commissioner under 20-30-201 or the prohibitions in
19 20-30-203, may sue in a court of proper jurisdiction of this
20 state the institution or the agent, or both, and their
21 sureties for the amount of the damage or loss and if
22 successful ~~shall~~ must be awarded, in addition to damages,
23 court costs and reasonable attorney's attorney fees."

24 **Section 15.** Section 20-30-403, MCA, is amended to read:
25 "20-30-403. Violations -- criminal -- penalty. Any

1 person, group, or entity or any owner, officer, agent, or
 2 employee thereof who ~~shall--willfully--violate~~ willfully
 3 violates the provisions of 20-30-203 or who ~~shall--willfully~~
 4 ~~fail~~ willfully fails or ~~refuse~~ refuses to deposit with the
 5 department commissioner the records required by 20-30-105
 6 ~~shall-be~~ is guilty of a misdemeanor and upon conviction
 7 shall be punished by a fine not to exceed \$1,000 or by
 8 imprisonment in the county jail not to exceed 6 months or by
 9 both such fine and imprisonment. Each day's failure to
 10 comply with the provisions of said sections ~~shall-be~~ is a
 11 separate violation. ~~Such-criminal~~ Criminal sanctions may be
 12 imposed by a court of competent jurisdiction in an action
 13 brought by the county attorney."

14 **Section 16.** Section 20-30-405, MCA, is amended to read:

15 "20-30-405. Enforcement -- injunction. (1) The county
 16 attorney of any county in which a postsecondary educational
 17 institution or an agent ~~thereof~~ of the institution is found,
 18 at the request of the department commissioner or on his own
 19 motion, may bring any appropriate action or proceeding
 20 (including injunctive proceedings or criminal proceedings
 21 pursuant to 20-30-403) in any court of competent
 22 jurisdiction for the enforcement of the provisions of this
 23 chapter.

24 (2) Whenever it ~~shall-appear~~ appears to the department
 25 commissioner that any person, agent, group, or entity is, is

1 about to, or has been violating any of the provisions of
 2 this chapter or any of the lawful rules or orders of the
 3 department; ~~it~~ commissioner, he may, on ~~its~~ his own motion
 4 or on the written complaint of any person, file a petition
 5 for injunction in any court of competent jurisdiction
 6 against such person, group, or entity for the purpose of
 7 enjoining ~~such~~ the violation or for an order directing
 8 compliance with the provisions of this chapter and all rules
 9 and orders issued by the department commissioner."

10 NEW SECTION. Section 17. Repealer. Sections 2-15-1804
 11 and 20-30-104, MCA, are repealed.

12 NEW SECTION. Section 18. Effective date. [This act] is
 13 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0406, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act to transfer the administration of postsecondary educational institutions from the Department of Commerce to the Commissioner of Higher Education and providing an effective date of July 1, 1991.

ASSUMPTIONS:

1. The current workload of the two FTE in the Consumer Affairs unit of the Department of Commerce will not be significantly reduced as a result of this transfer of administrative functions. No fiscal impact to the Dept. of Commerce is anticipated.
2. The revenue generated from fees and licensing for FY90 (\$2,070) will be the same in FY92 and FY93. It will continue to represent income to the general fund.
3. Issuance of licenses and permits will remain at the FY89 actual level: Out of State licenses and permits issued - 39
In-state licenses and permits issued - 57
4. The new duties transferred to the office of the Commissioner of Higher Education cannot be absorbed by existing staff. A 1.00 FTE compliance specialist grade 13, step 2 and 0.50 FTE, administrative assistant grade 8 step 2 would be required. The salaries and benefits for these positions are budgeted at the executive recommended level for FY92 and FY93.
5. The Commissioner of Higher Education will provide increased (over current level) active supervision and monitoring of compliance. This would include evaluation of curricula, reviewing finances and internal policies and conducting audits of records. Each in-state institution would be visited once per year.
6. Two additional desks and chairs and one personal computer will be required for the additional staff in FY92.
7. The transfer of this function will be complete by July 1, 1991. No "transfer" costs are incurred by either the Commissioner of Higher Education or the Dept. of Commerce.

FISCAL IMPACT:

see next page



ROD SUNDSTED, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

1-31-91

FRED "FRITZ" DAILY, PRIMARY SPONSOR DATE

Fiscal Note for HB0406, as introduced

HB 406

FISCAL IMPACT:

Commissioner of Higher Education:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
FTE		1.50	1.50		1.50	1.50
Personal Services	0	38,031	38,031	0	37,898	37,898
Operating Costs	0	1,018	1,018	0	1,018	1,018
Equipment	<u>0</u>	<u>5,499</u>	<u>5,499</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	0	44,548	44,548	0	38,916	38,916
<u>Funding:</u>						
General Fund	0	44,548	44,548	0	38,916	38,916

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