

SENATE BILL NO. 30

INTRODUCED BY TOWE, WANZENRIED, DOLEZAL, BLAYLOCK,
KILPATRICK, DRISCOLL, HARRINGTON

IN THE SENATE

DECEMBER 31, 1990 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

JANUARY 7, 1991 FIRST READING.

JANUARY 16, 1991 ON MOTION, ADDITIONAL SPONSORS ADDED.

JANUARY 22, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 23, 1991 PRINTING REPORT.

JANUARY 31, 1991 SECOND READING, DO PASS.

FEBRUARY 1, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
 AYES, 26; NOES, 24.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 2, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON LABOR & EMPLOYMENT RELATIONS.

 FIRST READING.

MARCH 8, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 11, 1991 SECOND READING, CONCURRED IN.

MARCH 12, 1991 THIRD READING, CONCURRED IN.
AYES, 60; NOES, 39.

 RETURNED TO SENATE.

IN THE SENATE

MARCH 13, 1991 RECEIVED FROM HOUSE.

 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 SENATE BILL NO. 30

2 INTRODUCED BY TOWE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE A
5 PROFESSIONAL STRIKEBREAKER; TO REQUIRE AN EMPLOYER INVOLVED
6 IN A STRIKE TO OBTAIN EMPLOYMENT INFORMATION FROM A
7 PROSPECTIVE EMPLOYEE PRIOR TO EMPLOYMENT; TO REQUIRE CERTAIN
8 EMPLOYMENT INFORMATION TO BE SUBMITTED TO THE COMMISSIONER
9 OF LABOR AND INDUSTRY; TO PROVIDE A PENALTY; AND AMENDING
10 SECTIONS 39-33-201 AND 39-33-202, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 39-33-201, MCA, is amended to read:

14 "39-33-201. Recruitment of strikebreakers by third
15 parties -- professional strikebreaker defined. (1) No A
16 person, partnership, firm, or officer or agent thereof of a
17 person, partnership, or firm may not recruit, procure,
18 supply, or refer a professional strikebreaker for employment
19 in place of an employee involved in a labor dispute when
20 such the person, partnership, or firm is not a party to the
21 dispute.

22 (2) A "professional strikebreaker" means a person who
23 within the previous 5 years:

24 (a) has been employed two or more times by an employer
25 when the employer's business has been involved in a labor

1 dispute resulting in a strike; or

2 (b) has offered himself three or more times for
3 employment to an employer when the employer's business has
4 been involved in a labor dispute resulting in a strike."

5 Section 2. Section 39-33-202, MCA, is amended to read:

6 "39-33-202. Professional strikebreakers prohibited --
7 information on employees seeking employment during strike
8 required -- penalty. (1) An employer involved in a labor
9 dispute may not employ a professional strikebreaker in the
10 place of an employee involved in such the dispute a
11 professional-strikebreaker who--customarily--and--repeatedly
12 offers--himself--for--employment--in--the--place--of--employees
13 involved-in-labor-disputes.

14 (2) A professional strikebreaker who--customarily--and
15 repeatedly--offers--himself--for--employment--in--place--of
16 employees-involved-in-labor-disputes may not take or offer
17 to take the place in employment of an employee involved in a
18 labor dispute within the state.

19 (3) Prior to hiring a prospective employee during a
20 strike, an employer shall ask the prospective employee if he
21 has worked during a strike within the last 5 years. If the
22 prospective employee has worked during a strike during this
23 time period, the prospective employee shall provide the name
24 and address of the employer for whom he worked.

25 (4) The information required in subsection (3) and any

1 other information requested regarding the employee's
2 previous employment during a strike must be submitted to the
3 commissioner within 10 days of employment.

4 (5) In all cases, the commissioner shall forward the
5 information to the union in charge of the strike. If it
6 appears that a violation of this section has occurred, the
7 commissioner shall forward the information to the county
8 attorney of the county in which the strike is taking place.

9 (6) A prospective employee who knowingly makes a false
10 statement to an employer concerning previous employment
11 during a strike or an employer who knowingly hires an
12 employee who has made false statements concerning previous
13 employment during a strike is guilty of a misdemeanor."

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

SENATE BILL NO. 30

INTRODUCED BY TOWE, WANZENRIED, DOLEZAL, BLAYLOCK,
KILPATRICK, DRISCOLL, HARRINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE A
PROFESSIONAL STRIKEBREAKER; TO REQUIRE AN EMPLOYER INVOLVED
IN A STRIKE TO OBTAIN EMPLOYMENT INFORMATION FROM A
PROSPECTIVE EMPLOYEE PRIOR TO EMPLOYMENT; TO REQUIRE CERTAIN
EMPLOYMENT INFORMATION TO BE SUBMITTED TO THE COMMISSIONER
OF LABOR AND INDUSTRY; TO PROVIDE A PENALTY; AND AMENDING
SECTIONS 39-33-201, AND 39-33-202, AND 39-33-205, MCA."

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

Section 1. Section 39-33-201, MCA, is amended to read:

"39-33-201. Recruitment of strikebreakers by third parties -- professional strikebreaker defined. (1) No A person, partnership, firm, or officer or agent thereof of a person, partnership, or firm may not recruit, procure, supply, or refer a professional strikebreaker for employment in place of an employee involved in a labor dispute when such the person, partnership, or firm is not a party to the dispute.

(2) A "professional strikebreaker" means a person who within the previous 5 years:

(a) has been employed two or more times by an employer

when the employer's business has been involved in a labor dispute resulting in a strike; or

(b) has offered himself three or more times for employment to an employer when the employer's business has been involved in a labor dispute resulting in a strike.

(3) THE TERM "PROFESSIONAL STRIKEBREAKER" DOES NOT INCLUDE A PERSON WHO HAS BEEN CONTINUOUSLY EMPLOYED IN MONTANA BY THE EMPLOYER FOR AT LEAST 1 YEAR PRIOR TO COMMENCEMENT OF A STRIKE. THE PERSON MAY NOT BE CONSIDERED A PROFESSIONAL STRIKEBREAKER FOR PURPOSES OF SUBSECTION (2)(A) OR (2)(B)."

Section 2. Section 39-33-202, MCA, is amended to read:

"39-33-202. Professional strikebreakers prohibited -- information on employees seeking employment during strike required -- penalty. (1) An employer involved in a labor dispute may not employ a professional strikebreaker in the place of an employee involved in such the dispute a professional strikebreaker who--customarily--and--repeatedly offers himself--for--employment--in--the--place--of--employees involved-in-labor-disputes.

(2) A professional strikebreaker who--customarily--and--repeatedly--offers--himself--for--employment--in--place--of--employees-involved-in-labor-disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

SECOND READING
SPONSORS ADDED



1 (3) Prior to hiring a prospective employee during a
 2 strike, an employer shall ask the prospective employee if he
 3 has worked during a strike within the last 5 years. If the
 4 prospective employee has worked during a strike during this
 5 time period, the prospective employee shall provide the name
 6 and address of the employer for whom he worked.

7 (4) The information required in subsection (3) and any
 8 other information requested regarding the employee's
 9 previous employment during a strike must be submitted to the
 10 commissioner within 10 days of employment.

11 (5) In all cases, the commissioner shall forward the
 12 information to the union in charge of the strike. If it
 13 appears that a violation of this section has occurred, the
 14 commissioner shall forward the information to the county
 15 attorney of the county in which the strike is taking place.

16 (6) A prospective employee who knowingly makes a false
 17 statement to an employer concerning previous employment
 18 during a strike or an employer who knowingly hires an
 19 employee who has made false statements concerning previous
 20 employment during a strike is guilty of a misdemeanor."

21 **SECTION 3. SECTION 39-33-205, MCA, IS AMENDED TO READ:**

22 "39-33-205. Penalties. A Except as provided in
 23 39-33-202(6), a person convicted of violating 39-33-201,
 24 39-33-202, or 39-33-203 shall be punished by a fine of not
 25 less than \$1,000 or more than \$5,000 or by imprisonment for

1 not less than 1 or more than 2 years. A person convicted of
 2 violating 39-33-204 shall be punished by a fine of not less
 3 than \$100 or more than \$500 or imprisonment for not more
 4 than 30 days."

-End-

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INTRODUCED BY TOWE, WANZENRIED, DOLEZAL, BLAYLOCK,

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A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE A PROFESSIONAL STRIKEBREAKER; TO REQUIRE AN EMPLOYER INVOLVED IN A STRIKE TO OBTAIN EMPLOYMENT INFORMATION FROM A PROSPECTIVE EMPLOYEE PRIOR TO EMPLOYMENT; TO REQUIRE CERTAIN EMPLOYMENT INFORMATION TO BE SUBMITTED TO THE COMMISSIONER OF LABOR AND INDUSTRY; TO PROVIDE A PENALTY; AND AMENDING SECTIONS 39-33-201, AND 39-33-202, AND 39-33-205, MCA."

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(2) A "professional strikebreaker" means a person who within the previous 5 years:

(a) has been employed two or more times by an employer

when the employer's business has been involved in a labor dispute resulting in a strike; or

(b) has offered himself three or more times for employment to an employer when the employer's business has been involved in a labor dispute resulting in a strike.

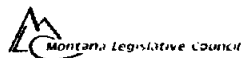
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Section 2. Section 39-33-202, MCA, is amended to read:

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(2) A professional strikebreaker who--customarily--and--repeatedly--offers--himself--for--employment--in--place--of--employees-involved-in-labor-disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

THIRD READING



1 (3) Prior to hiring a prospective employee during a
 2 strike, an employer shall ask the prospective employee if he
 3 has worked during a strike within the last 5 years. If the
 4 prospective employee has worked during a strike during this
 5 time period, the prospective employee shall provide the name
 6 and address of the employer for whom he worked.

7 (4) The information required in subsection (3) and any
 8 other information requested regarding the employee's
 9 previous employment during a strike must be submitted to the
 10 commissioner within 10 days of employment.

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 12 information to the union in charge of the strike. If it
 13 appears that a violation of this section has occurred, the
 14 commissioner shall forward the information to the county
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22 **"39-33-205. Penalties. A Except as provided in**
 23 **39-33-202(6), a person convicted of violating 39-33-201,**
 24 **39-33-202, or 39-33-203 shall be punished by a fine of not**
 25 **less than \$1,000 or more than \$5,000 or by imprisonment for**

1 not less than 1 or more than 2 years. A person convicted of
 2 violating 39-33-204 shall be punished by a fine of not less
 3 than \$100 or more than \$500 or imprisonment for not more
 4 than 30 days."

-End-

SENATE BILL NO. 30

INTRODUCED BY TOWE, WANZENRIED, DOLEZAL, BLAYLOCK,
KILPATRICK, DRISCOLL, HARRINGTON

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(2) A "professional strikebreaker" means a person who within the previous 5 years:

(a) has been employed two or more times by an employer

when the employer's business has been involved in a labor dispute resulting in a strike; or (b) has offered himself three or more times for employment to an employer when the employer's business has been involved in a labor dispute resulting in a strike.

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Section 2. Section 39-33-202, MCA, is amended to read:

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(2) A professional strikebreaker who--customarily--and--repeatedly--offers--himself--for--employment--in--place--of--employees-involved-in-labor-disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

REFERENCE BILL



1 (3) Prior to hiring a prospective employee during a
 2 strike, an employer shall ask the prospective employee if he
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 4 prospective employee has worked during a strike during this
 5 time period, the prospective employee shall provide the name
 6 and address of the employer for whom he worked.

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 25 less than \$1,000 or more than \$5,000 or by imprisonment for

1 not less than 1 or more than 2 years. A person convicted of
 2 violating 39-33-204 shall be punished by a fine of not less
 3 than \$100 or more than \$500 or imprisonment for not more
 4 than 30 days."

-End-



State of Montana
Office of the Governor
Helena, Montana 59620
406-444-3111

STAN STEPHENS
GOVERNOR

March 20, 1991

The Honorable Joseph P. Mazurek
President of the Senate
State Capitol
Helena, Montana 59620

The Honorable Hal Harper
Speaker of the House
State Capitol
Helena, Montana 59620

Dear President Mazurek and Speaker Harper:

In accordance with the power vested in me as Governor by the Constitution and laws of the State of Montana, I hereby veto the adoption of Senate Bill 30, "AN ACT TO DEFINE A PROFESSIONAL STRIKEBREAKER ; TO REQUIRE AN EMPLOYER INVOLVED IN A STRIKE TO OBTAIN EMPLOYMENT INFORMATION FROM A PROSPECTIVE EMPLOYEE PRIOR TO EMPLOYMENT; TO REQUIRE CERTAIN EMPLOYMENT INFORMATION TO BE SUBMITTED TO THE COMMISSIONER OF LABOR AND INDUSTRY; TO PROVIDE A PENALTY; AND AMENDING SECTIONS 39-33-201, ~~AND~~ 39-33-202, AND 39-33-205, MCA." This veto is made for the following reasons.

"The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest." These words govern our actions and conduct and are found in Section 10, Article II of the Montana Constitution. Senate Bill 30 offends this basic principle. The requirement to mandate a prospective employer to inquire and divulge information concerning an employee's prior employment history for purposes of resolving issues of collective bargaining is not elevated to a compelling state interest.

The bill is vague, confusing and invites litigation at the expense of unsuspecting men and women who seek employment in this state.

The present law prevents and prohibits professional strike breakers in labor disputes. It is sound law and one that is necessary and provides a reasonable balance and criteria to determine whether an individual is a strikebreaker. The present law accommodates the factual differences that may arise anywhere

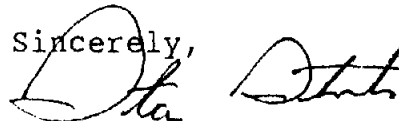
The Honorable Joseph P. Mazurek
The Honorable Hal Harper
March 20, 1991
Page Two

in Montana in labor disputes. The law identifies the criteria and defines the strikebreaker as "one who customarily and repeatedly offers himself for employment in the place of employees involved in labor disputes." That is the responsibility of the appropriate court who must make findings of fact and conclusions of law based on the facts of the strike and the employer and employee at that time.

One cannot and should not, by statute, categorize all labor disputes and circumstances surrounding employees in the same light as Senate Bill 30 would do. One cannot assume that an individual who wants to work is presumed to be a professional strikebreaker simply because he or she find themselves in employment that involves a labor dispute under an awkward formula contained in this bill.

I cannot condone requiring an employee to divulge employment information that is not necessary as a condition of employment and then expect the employer to furnish this information to state government. What is more, state government is required to divulge that information to a labor union. No public interest is served in providing this information to non-government organizations. The right of the individual employee's right to privacy should not be offended. I, therefore, veto Senate Bill 30.

Sincerely,

A handwritten signature in black ink, appearing to read "Stan Stephens", written in a cursive style.

STAN STEPHENS
Governor



AN ACT TO DEFINE A PROFESSIONAL STRIKEBREAKER; TO REQUIRE AN EMPLOYER INVOLVED IN A STRIKE TO OBTAIN EMPLOYMENT INFORMATION FROM A PROSPECTIVE EMPLOYEE PRIOR TO EMPLOYMENT; TO REQUIRE CERTAIN EMPLOYMENT INFORMATION TO BE SUBMITTED TO THE COMMISSIONER OF LABOR AND INDUSTRY; TO PROVIDE A PENALTY; AND AMENDING SECTIONS 39-33-201, 39-33-202, AND 39-33-205, MCA.

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(2) A "professional strikebreaker" means a person who within the previous 5 years:

(a) has been employed two or more times by an employer when the employer's business has been involved in a labor dispute resulting in a strike; or

(b) has offered himself three or more times for employment to an employer when the employer's business has been involved in a labor dispute resulting in a strike.

(3) The term "professional strikebreaker" does not include a

person who has been continuously employed in Montana by the employer for at least 1 year prior to commencement of a strike. The person may not be considered a professional strikebreaker for purposes of subsection (2)(a) or (2)(b)."

Section 2. Section 39-33-202, MCA, is amended to read:

"39-33-202. Professional strikebreakers prohibited -- information on employees seeking employment during strike required -- penalty. (1) An employer involved in a labor dispute may not employ a professional strikebreaker in the place of an employee involved in such the dispute a--professional--strikebreaker who customarily--and--repeatedly--offers-himself-for-employment-in-the place-of-employees-involved-in-labor-disputes.

(2) A professional strikebreaker who---customarily---and repeatedly---offers---himself---for---employment-in-place-of-employees involved-in-labor-disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

(3) Prior to hiring a prospective employee during a strike, an employer shall ask the prospective employee if he has worked during a strike within the last 5 years. If the prospective employee has worked during a strike during this time period, the prospective employee shall provide the name and address of the employer for whom he worked.

(4) The information required in subsection (3) and any other information requested regarding the employee's previous employment

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during a strike must be submitted to the commissioner within 10 days of employment.

(5) In all cases, the commissioner shall forward the information to the union in charge of the strike. If it appears that a violation of this section has occurred, the commissioner shall forward the information to the county attorney of the county in which the strike is taking place.

(6) A prospective employee who knowingly makes a false statement to an employer concerning previous employment during a strike or an employer who knowingly hires an employee who has made false statements concerning previous employment during a strike is guilty of a misdemeanor."

Section 3. Section 39-33-205, MCA, is amended to read:

"39-33-205. Penalties. A Except as provided in 39-33-202(6), a person convicted of violating 39-33-201, 39-33-202, or 39-33-203 shall be punished by a fine of not less than \$1,000 or more than \$5,000 or by imprisonment for not less than 1 or more than 2 years. A person convicted of violating 39-33-204 shall be punished by a fine of not less than \$100 or more than \$500 or imprisonment for not more than 30 days."