

SENATE BILL NO. 104

Introduced: 01/11/83

Referred to Committee on State Administration: 01/11/83

Hearing: 1/18/83

Report: 1/31/83, Do Not Pass. Report Adopted.

Bill Killed.

SENATE BILL NO. 104
 INTRODUCED BY *Heating, E. Smith, Underdal, Sandra Lee, R. Martin, Tom Jones*
 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A
 SELF-GOVERNING BOARD FOR REGULATION AND LICENSURE OF
 EMPLOYMENT AGENCIES; AMENDING SECTIONS 39-5-102, 39-5-103,
 39-5-202 THROUGH 39-5-206, 39-5-209, 39-5-301, 39-5-303,
 39-5-311, AND 39-5-401 THROUGH 39-5-403, MCA."

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

NEW SECTION. Section 1. Board of employment agencies.

(1) There is a board of employment agencies.

(2) The board consists of five members appointed by the governor with the consent of the senate. Four members shall be representatives of licensed employment agencies. One member shall be a representative of the public who is not engaged in the business or an employee of a person who is engaged in the business of an employment agency as defined in 39-5-102.

(3) Board members shall serve staggered 5-year terms.

(4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

Section 2. Section 39-5-102, MCA, is amended to read:

"39-5-102. Definitions. Unless a different meaning is

clearly required by the context, the following words and phrases, as used in this chapter, have the following meanings:

(1) "Board" means the board of employment agencies established by [section 1].

(2) (a) "Employment agency" is synonymous with "agency" and means any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" means and includes any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" does not include labor union organizations, temporary service contractors, proprietary schools, musical booking services, agents for

1 professional athletes, or the Montana state employment
2 agency.

3 ~~(2)(3)~~ "Temporary service contractors" means any
4 person, firm, association, or corporation conducting a
5 business which consists of employing individuals directly
6 for the purpose of furnishing such individuals on a
7 part-time or temporary basis to others.

8 ~~(3)(4)~~ "Employer" means any person, firm, corporation,
9 partnership, or association employing or seeking to enter
10 into an arrangement to employ a person through the medium or
11 service of an employment agency.

12 ~~(4)(5)~~ "Applicant", except when used to describe an
13 applicant for an employment agency license, means any
14 person, whether employed or unemployed, seeking or entering
15 into any arrangement for his employment or change of his
16 employment through the medium or service of an employment
17 agency.

18 ~~(5)(6)~~ "Person" includes an individual, a firm, a
19 corporation, a partnership, or an association.

20 ~~(6) "Director" means the commissioner of the~~
21 ~~department of labor and industry.~~

22 (7) "Musical booking service" means any person, firm,
23 association, or corporation conducting a business which
24 consists solely of obtaining, obtaining offers of, and
25 negotiating employment for individuals or groups of

1 individuals for musical entertainment purposes.

2 (8) "Agents for professional athletes" means any
3 person, firm, association, or corporation conducting a
4 business that consists solely of obtaining, obtaining offers
5 of, and negotiating contracts of employment of professional
6 athletes."

7 Section 3. Section 39-5-103, MCA, is amended to read:

8 "39-5-103. Administration -- rules. The director board
9 shall administer the provisions of this chapter and shall
10 issue from time to time reasonable rules for enforcing and
11 carrying out the provisions and purposes of this chapter."

12 Section 4. Section 39-5-202, MCA, is amended to read:

13 "39-5-202. Application for license or renewal. (1)
14 Every applicant for an employment agency license or a
15 renewal thereof shall file with the director board a written
16 application stating the name and address of the applicant,
17 the street and number of the building in which the business
18 of the employment agency is to be conducted, the name of the
19 person who is to have the general management of the office,
20 the name under which the business of the office is to be
21 carried on, and whether or not the applicant is pecuniarily
22 interested in the business to be carried on under the
23 license. The application must be signed by the applicant and
24 sworn to before a notary public and must identify anyone
25 holding over 20% interest in the agency.

(2) If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation and must be signed and sworn to by the president and secretary thereof before a notary public.

(3) If the applicant is a partnership, the application must also state the names and addresses of all partners therein and must be signed and sworn to by all of them before a notary public.

(4) The application must also state whether or not the applicant, at the time of making the application or at any previous time, has been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(5) All applications for employment agency licenses must be accompanied by a copy of the form of contract to be used between the agency and the applicant."

Section 5. Section 39-5-203, MCA, is amended to read:

"39-5-203. Grounds for denial, suspension, or revocation of license. The director board may by order deny, suspend, or revoke the license of any employment agency if he it finds that the applicant or licensee:

(1) was previously the holder of a license issued under this chapter which was revoked for cause and never reissued by the director board or which license was

suspended for cause and the terms of the suspension have not been fulfilled;

(2) has been found guilty of any felony within the past 5 years involving moral turpitude or for any misdemeanor concerning fraud or conversion or suffering any judgment in any civil action involving willful fraud, misrepresentation, or conversion;

(3) has made a false statement of a material fact in his application or in any data attached thereto;

(4) has violated any provisions of this chapter or failed to comply with any rule issued by the director board pursuant to this chapter."

Section 6. Section 39-5-204, MCA, is amended to read:

"39-5-204. License fees. The following fees shall be charged by the director board to those parties licensed as employment agencies:

(1) original applications, \$100;

(2) renewal per year, \$100;

(3) branch license, both original and renewal, \$100;

(4) transfer of license, \$25;

(5) approval of amended or new contracts, \$15 per contract."

Section 7. Section 39-5-205, MCA, is amended to read:

"39-5-205. Disposition of license fees. All license fees shall revert to department of labor and industry the

1 board to be used for administration of this chapter."

2 Section 8. Section 39-5-206, MCA, is amended to read:

3 "39-5-206. Bond of licensee. Before conducting any
4 business as an employment agency, each licensee shall file
5 with the director board a surety bond in the sum of \$2,000
6 running to the state of Montana for the benefit of any
7 person injured or damaged as a result of any violation by
8 the licensee or his agent of any of the provisions of this
9 chapter or of any rule adopted by the director board
10 pursuant to 39-5-103."

11 Section 9. Section 39-5-209, MCA, is amended to read:

12 "39-5-209. Consent required prior to transfer of
13 license or connection of additional persons with business.
14 No license granted pursuant to this chapter shall be
15 transferable without the consent of the director board. No
16 employment agency shall permit any person not mentioned in
17 the license application to become connected with the
18 business as an owner, member, officer, or director without
19 the consent of the director board. Consent may be withheld
20 for any reason for which an original application for a
21 license might have been rejected if the person in question
22 had been mentioned therein."

23 Section 10. Section 39-5-301, MCA, is amended to read:

24 "39-5-301. Records to be kept. (1) Each employment
25 agency shall keep records of all services rendered employers

1 and applicants. These records shall contain the name and
2 address of the employer by whom the services were solicited,
3 the name and address of the applicant, kind of position
4 ordered by the employer, kind of position accepted by the
5 applicant, probable duration of the employment, if known,
6 rate of wage or salary to be paid the applicant, amount of
7 the employment agency's fee, dates and amounts of refund, if
8 any, and reason for such refund, and the contract agreed to
9 between the agency and applicant.

10 (2) Unless otherwise provided by rules adopted by the
11 director board, such records shall be maintained for a
12 period of 3 years from the date in which they are made."

13 Section 11. Section 39-5-303, MCA, is amended to read:

14 "39-5-303. Regulation of fees -- disapproval of
15 contract. (1) The fee charged by any employment agency for
16 its services must be based on a percentage of the ^{gross} income of
17 the applicant ^{for} during his first year of employment. The
18 percentage charged must be determined by the agency and is
19 not subject to disapproval by the director board.

20 (2) No applicant may be required to pay more than one
21 fee per placement.

22 (3) No employment agency may impose a fee in excess of
23 that agreed to in writing.

24 (4) A fee schedule must be printed on all contracts,
25 and a copy of the contract containing the fee schedule must

1 be given to each applicant prior to any discussion of
2 available employment.

3 (5) Prior to using any contract in the transaction of
4 its business with applicants, each employment agency shall
5 obtain the ~~director's~~ board's approval for the use of such
6 contract. The ~~director~~ board shall disapprove any proposed
7 contract which either tends to be or is vague, deceitful, or
8 misrepresentative."

9 Section 12. Section 39-5-311, MCA, is amended to read:

10 "39-5-311. Fees to be returned in certain cases. (1)

11 Where an applicant for employees or employment who has paid
12 a fee fails to secure or refuses to accept employees or
13 employment, such fee shall be returned in cash within 7 days
14 after demand.

15 (2) If employment obtained for an applicant ends in
16 less than 100 calendar days from the first day of
17 employment, regardless of the reason, the fee charged by the
18 agency will be reduced by 1% of the fee for each calendar
19 day remaining of the 100 days.

20 (3) Any employment agency which collects, receives, or
21 retains a fee or other payment contrary to the provisions of
22 this chapter or to the rules adopted pursuant to this
23 chapter shall return the excessive portion of the fee within
24 7 days after receiving a demand therefor from the ~~director~~
25 board."

1 Section 13. Section 39-5-401, MCA, is amended to read:

2 "39-5-401. Investigative powers of ~~director~~ board. (1)

3 The ~~director~~ board shall have supervisory and investigative
4 authority over all employment agencies. Upon receiving a
5 complaint against any employment agency, the ~~director~~ board
6 shall have the right to examine all books, documents, or
7 records in its possession. In addition, the ~~director~~ board
8 may examine the office or offices where business is or shall
9 be conducted by such agency.

10 (2) The ~~director~~ board shall have power to compel the
11 attendance of witnesses by the issuance of subpoenas, to
12 administer oaths, and to take testimony and proofs
13 concerning all matters pertaining to the administration of
14 this chapter.

15 (3) The ~~director~~ board shall have authority to demand
16 and examine at the employment agency's regular place of
17 business all books, documents, and records in its possession
18 for inspection."

19 Section 14. Section 39-5-402, MCA, is amended to read:

20 "39-5-402. Department ~~Departments~~ to forward

21 complaints to agency involved or agency association. Any
22 complaints filed with the department of labor and industry
23 or the department of commerce shall be sent to that private
24 employment agency involved or to the Montana private
25 employment agency association."

1 Section 15. Section 39-5-403, MCA, is amended to read:
2 "39-5-403. Referral of violations to prosecuting
3 attorneys — restraining actions. The director board may
4 refer such evidence as may be available to him it concerning
5 violations of this chapter or of any rule adopted hereunder
6 to the attorney general or the county attorney of the county
7 wherein the alleged violation arose who may, in his
8 discretion, with or without such a reference, in addition to
9 any other action he might commence, bring an action in the
10 name of the state against any person to restrain and prevent
11 the doing of any act or practice prohibited by this
12 chapter."

13 NEW SECTION. Section 16. Initial appointments. (1)
14 The initial board of employment agencies must be appointed
15 by the governor as follows:

- 16 (a) two members for 5-year terms;
17 (b) two members for 3-year terms; and
18 (c) one member for a 1-year term.
19 (2) Thereafter all appointments must be for 5-year
20 terms.

21 NEW SECTION. Section 17. Existing rules. The board of
22 employment agencies succeeds to the rules adopted pursuant
23 to 39-5-103 by the commissioner of the department of labor
24 and industry prior to October 1, 1983, and such rules remain
25 in effect as such until amended or repealed by the board.

-End-

-11-

STATE OF MONTANA

REQUEST NO. 084-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 12, , 19 83 , there is hereby submitted a Fiscal Note for Senate Bill 104 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 104 establishes a self-governing board for regulation and licensure of employment agencies and amends Sections 39-5-102, 39-5-103, 39-5-206, 39-5-209, 39-5-301, 39-5-303, 39-5-311, and 39-5-401 through 39-5-403, MCA.

ASSUMPTIONS:

- 1) Assume 25 current licensees per year at \$100 each.
- 2) Assume 2 board meetings per year, 5 members = 10 meeting days.
- 3) Assume 2 contract reviews per year at \$15 each.
- 4) Assume .40 FTE required for reviewing contracts and making investigations of complaints (Grade 10, step 2).
- 5) 10 rule notices and replacement pages at \$25 per page.
- 6) Assume minimum operating expenses of \$10,000 per year.
- 7) Assume \$1,000 transfer costs to department per year for basic costs.

FISCAL IMPACT:

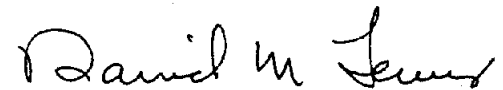
	FY84	FY85
Revenue	\$ 2,530	\$ 2,530
Expenditures	(17,314)	(17,314)
Net Expenditures	<u>\$(14,784)</u>	<u>\$(14,784)</u>

Labor Standards will no longer incur any costs.

TECHNICAL NOTES:

This bill does not provide for the proper disposition of fees. Should have fees deposited to general fund or an earmarked fund for the use of the board. Does not provide for board members to receive compensation or travel expenses while attending to board business. The 1981 Legislative Session updated the Professional and Occupational Licensing Board to provide for the boards to raise or set fees by rule change to be commensurate with costs. This proposed legislation has set the fees but there is not enough revenue to offset the anticipated expenditures.

FISCAL NOTE 4:F/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-17-83