

SENATE BILL NO. 341

INTRODUCED BY KEATING, VAN VALKENBURG

IN THE SENATE

FEBRUARY 14, 1987           INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & INDUSTRY.

FEBRUARY 21, 1987           COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 23, 1987           PRINTING REPORT.

FEBRUARY 24, 1987           SECOND READING, DO PASS.

FEBRUARY 25, 1987           ENGROSSING REPORT.

THIRD READING, PASSED.  
AYES, 48; NOES, 2.

TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 3, 1987           INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & LABOR.

MARCH 20, 1987           COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 28, 1987           SECOND READING, CONCURRED IN.

MARCH 30, 1987           THIRD READING, CONCURRED IN.  
AYES, 98; NOES, 0.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1987           RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 4, 1987

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

1 *Senate* BILL NO. *341*  
 2 INTRODUCED BY *Spating Van Valkenburg*  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 EMPLOYMENT AGENCY ACT; TRANSFERRING REGULATION OF PRIVATE  
 6 EMPLOYMENT AGENCIES TO THE DEPARTMENT OF COMMERCE; AMENDING  
 7 SECTIONS 39-5-102, 39-5-308, AND 39-5-401, MCA; AND  
 8 PROVIDING AN EFFECTIVE DATE."  
 9

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

11 Section 1. Section 39-5-102, MCA, is amended to read:

12 "39-5-102. Definitions. Unless a different meaning is  
 13 clearly required by the context, the following words and  
 14 phrases, as used in this chapter, have the following  
 15 meanings:

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

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

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

25 (b) In addition, the term "employment agency" means

1 and includes any person, bureau, organization, or school  
 2 which for profit, by advertisement or otherwise, offers as  
 3 one of its main objects or purposes to procure employment  
 4 for any person who pays for its services or which collects  
 5 tuition or charges for service of any nature where the main  
 6 object of the person paying the same is to secure  
 7 employment.

8 (c) The term "employment agency" does not include  
 9 labor union organizations, temporary service contractors,  
 10 proprietary schools, musical booking services, agents for  
 11 professional athletes, or the Montana state employment  
 12 agency.

13 (2) "Temporary service contractors" means any person,  
 14 firm, association, or corporation conducting a business  
 15 which consists of employing individuals directly for the  
 16 purpose of furnishing such individuals on a part-time or  
 17 temporary basis to others.

18 (3) "Employer" means any person, firm, corporation,  
 19 partnership, or association employing or seeking to enter  
 20 into an arrangement to employ a person through the medium or  
 21 service of an employment agency.

22 (4) "Applicant", except when used to describe an  
 23 applicant for an employment agency license, means any  
 24 person, whether employed or unemployed, seeking or entering  
 25 into any arrangement for his employment or change of his



1 employment through the medium or service of an employment  
2 agency.

3 (5) "Department" means the department of commerce  
4 provided for in 2-15-1801.

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

7 (6)--"Director"---means---the---commissioner---of---the  
8 department-of-labor-and-industry-

9 (7) "Musical booking service" means any person, firm,  
10 association, or corporation conducting a business which  
11 consists solely of obtaining, obtaining offers of, and  
12 negotiating employment for individuals or groups of  
13 individuals for musical entertainment purposes.

14 (8) "Agents for professional athletes" means any  
15 person, firm, association, or corporation conducting a  
16 business that consists solely of obtaining, obtaining offers  
17 of, and negotiating contracts of employment of professional  
18 athletes."

19 Section 2. Section 39-5-308, MCA, is amended to read:

20 "39-5-308. When agency may charge a fee. (1) No  
21 employment agency shall charge or accept a fee or other  
22 consideration from an applicant without complying with the  
23 terms of a written contract as specified in 39-5-302 and  
24 then only after such agency has been responsible for  
25 referring such job applicant to an employer or such employer

1 to a job applicant and where as a result thereof such job  
2 applicant has been employed by such employer.

3 ~~(2)--No--fee--shall--be--solicited--or--accepted--as--an~~  
4 ~~application-or-registration-fee--by--any--employment--agency~~  
5 ~~solely--for--the-purpose-of-being-registered-as-an-applicant~~  
6 ~~for-employment-~~

7 (3)(2) No Except as provided in subsection (3), no fee  
8 shall be charged an applicant referred to a state employment  
9 office or any organization having exclusive hiring hall  
10 procedures as provided in the National Labor Relations Act.

11 (3) An employment agency may charge an applicant a fee  
12 for a referral to a state employment office if:

13 (a) the employer does not accept a direct referral  
14 from an employment agency; and

15 (b) the applicant becomes employed by such employer as  
16 a result of the referral made by the employment agency."

17 Section 3. Section 39-5-401, MCA, is amended to read:

18 "39-5-401. ~~Investigative-powers-of-director~~ Complaints  
19 against employment agencies. (1)--The--director--shall--have  
20 supervisory--and-investigative-authority-over-all-employment  
21 agencies- Upon receiving a complaint against any employment  
22 agency, the ~~director--shall--have-the-right-to-examine-all~~  
23 ~~books,--documents,--or--records--in--its--possession,---in~~  
24 ~~addition,--the--director--may--examine-the-office-or-offices~~  
25 ~~where-business-is-or-shall-be-conducted-by-such-agency-~~

1       ~~{2}--The--director--shall--have--power--to--compel--the~~  
 2       ~~attendance--of--witnesses--by--the--issuance--of--subpoenas,--to~~  
 3       ~~administer--oaths,--and--to--take--testimony--and--proofs~~  
 4       ~~concerning--all--matters--pertaining--to--the--administration--of~~  
 5       ~~this--chapter:~~

6       ~~{3}--The--director--shall--have--authority--to--demand--and~~  
 7       ~~examine--at--the--employment--agency's--regular--place--of--business~~  
 8       ~~all--books,--documents,--and--records--in--its--possession--for~~  
 9       ~~inspection.  department shall forward the complaint to the~~  
 10       ~~county attorney having jurisdiction in the matter. The~~  
 11       ~~county attorney may request or subpoena any documents~~  
 12       ~~related to the complaint."~~

13       NEW SECTION. Section 4. Functions of commissioner of  
 14       labor and industry transferred -- name change. (1) The  
 15       functions of the commissioner of labor and industry  
 16       contained in 39-5-103, 39-5-202 through 39-5-204, 39-5-206,  
 17       39-5-209, 39-5-301, 39-5-303, 39-5-311, and 39-5-403, which  
 18       functions relate to administration and enforcement of The  
 19       Employment Agency Act, are transferred to the department of  
 20       commerce.

21       (2) In the provisions of the Montana Code Annotated  
 22       listed in subsection (1) and in any legislation enacted by  
 23       the 50th legislature relating to The Employment Agency Act,  
 24       the term "director", meaning the commissioner of labor and  
 25       industry, is changed to "department of commerce" or

1       "department", meaning the department of commerce.

2       NEW SECTION. Section 5. Functions of department of  
 3       labor and industry transferred -- name change. (1) The  
 4       functions of the department of labor and industry contained  
 5       in 39-5-205 and 39-5-402, which functions relate to  
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 7       are transferred to the department of commerce.

8       (2) In the provisions of the Montana Code Annotated  
 9       listed in subsection (1) and in any legislation enacted by  
 10       the 50th legislature relating to The Employment Agency Act,  
 11       the term "department of labor and industry" or "department",  
 12       meaning the department of labor and industry, is changed to  
 13       "department of commerce" or "department", meaning the  
 14       department of commerce.

15       NEW SECTION. Section 6. Effective date. This act is  
 16       effective July 1, 1987.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB341, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the Employment Agency Act by transferring regulation of private employment agencies from the Department of Labor and Industry to the Department of Commerce, modifying when an employment agency may charge a fee, changing responsibility for investigating complaints from the Commissioner of Labor and Industry to the county attorney having jurisdiction in the matter.

ASSUMPTIONS:

1. The Department of Commerce will provide the same level of services currently provided by the Department of Labor and Industry at the same cost.
2. Revenue available to operate the program will continue to be adequate for operation of the transferred function.
3. The same minimal level of complaints will occur throughout the 1989 biennium.

FISCAL IMPACT:

	FY88		FY89		Difference
	Current	Proposed	Current	Proposed	Proposed
<u>Expenditures:</u>	\$ 4,000	\$ 4,000	\$ 4,000	\$ 4,000	\$ 0
<u>Revenues:</u>	4,000	4,000	4,000	4,000	0
TOTAL	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Smaller counties may experience increased costs of complaint investigation, although larger counties will probably not experience significant increases beyond the current budgets.

David L. Hunter DATE 2/19/87  
 DAVID L. HUNTER, BUDGET DIRECTOR  
 Office of Budget and Program Planning

Thomas Keating DATE \_\_\_\_\_  
 THOMAS KEATING, PRIMARY SPONSOR

Fiscal Note for SB341, as introduced.

**SB 341**

APPROVED BY COMM. ON  
BUSINESS & INDUSTRY

SENATE BILL NO. 341

INTRODUCED BY KEATING, VAN VALKENBURG

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(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  
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(c) The term "employment agency" does not include  
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9 FEE DOES NOT INCLUDE A FEE CHARGED FOR A SERVICE OFFERED IN  
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17 ~~Relations Act.~~

18 ~~(3)--An-employment-agency-may-charge-an-applicant-a-fee~~  
19 ~~for-a-referral-to-a-state-employment-office-if-~~

20 ~~(a)--the-employer-does-not-accept--a--direct--referral~~  
21 ~~from-an-employment-agency; and~~

22 ~~(b)--the-applicant-becomes-employed-by-such-employer-as~~  
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15 meanings:

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

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

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

25 (b) In addition, the term "employment agency" means

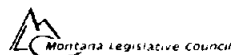
1 and includes any person, bureau, organization, or school  
2 which for profit, by advertisement or otherwise, offers as  
3 one of its main objects or purposes to procure employment  
4 for any person who pays for its services or which collects  
5 tuition or charges for service of any nature where the main  
6 object of the person paying the same is to secure  
7 employment.

8 (c) The term "employment agency" does not include  
9 labor union organizations, temporary service contractors,  
10 proprietary schools, musical booking services, agents for  
11 professional athletes, or the Montana state employment  
12 agency.

13 (2) "Temporary service contractors" means any person,  
14 firm, association, or corporation conducting a business  
15 which consists of employing individuals directly for the  
16 purpose of furnishing such individuals on a part-time or  
17 temporary basis to others.

18 (3) "Employer" means any person, firm, corporation,  
19 partnership, or association employing or seeking to enter  
20 into an arrangement to employ a person through the medium or  
21 service of an employment agency.

22 (4) "Applicant", except when used to describe an  
23 applicant for an employment agency license, means any  
24 person, whether employed or unemployed, seeking or entering  
25 into any arrangement for his employment or change of his



1 employment through the medium or service of an employment  
2 agency.

3 (5) "Department" means the department of commerce  
4 provided for in 2-15-1801.

5 (6) "FEE" MEANS A PLACEMENT FEE. A PLACEMENT FEE IS A  
6 FEE CHARGED BY AN AGENCY FOR PLACEMENT THAT IS THE SERVICE  
7 OF REFERRING AN APPLICANT TO AN EMPLOYER FOR EMPLOYMENT AND  
8 WHICH RESULTS IN EMPLOYMENT OF THE APPLICANT. A PLACEMENT  
9 FEE DOES NOT INCLUDE A FEE CHARGED FOR A SERVICE OFFERED IN  
10 ADDITION TO A PLACEMENT SERVICE.

11 (5)(6)(7) "Person" includes an individual, a firm, a  
12 corporation, a partnership, or an association.

13 (6) "Director" means the commissioner of the  
14 department of labor and industry.

15 (7)(8) "Musical booking service" means any person,  
16 firm, association, or corporation conducting a business  
17 which consists solely of obtaining, obtaining offers of, and  
18 negotiating employment for individuals or groups of  
19 individuals for musical entertainment purposes.

20 (8)(9) "Agents for professional athletes" means any  
21 person, firm, association, or corporation conducting a  
22 business that consists solely of obtaining, obtaining offers  
23 of, and negotiating contracts of employment of professional  
24 athletes."

25 Section 2. Section 39-5-308, MCA, is amended to read:

1 "39-5-308. When agency may charge a fee. (1) No  
2 employment agency shall charge or accept a fee or other  
3 consideration from an applicant without complying with the  
4 terms of a written contract as specified in 39-5-302 and  
5 then only after such agency has been responsible for  
6 referring such job applicant to an employer or such employer  
7 to a job applicant and where as a result thereof such job  
8 applicant has been employed by such employer.

9 ~~(2) No fee shall be solicited or accepted as an~~  
10 ~~application or registration fee by any employment agency~~  
11 ~~solely for the purpose of being registered as an applicant~~  
12 ~~for employment.~~

13 (2) NO FEE SHALL BE SOLICITED OR ACCEPTED AS AN  
14 APPLICATION OR REGISTRATION FEE BY ANY EMPLOYMENT AGENCY  
15 SOLELY FOR THE PURPOSE OF BEING REGISTERED AS AN APPLICANT  
16 FOR EMPLOYMENT.

17 ~~(3)(2)(3) No~~ Except as provided in subsection (3), no  
18 NO fee shall be charged an applicant referred to a state  
19 employment office or any organization having exclusive  
20 hiring hall procedures as provided in the National Labor  
21 Relations Act.

22 ~~(3) An employment agency may charge an applicant a fee~~  
23 ~~for a referral to a state employment office if:~~

24 ~~(a) the employer does not accept a direct referral~~  
25 ~~from an employment agency; and~~

~~(b) the applicant becomes employed by such employer as a result of the referral made by the employment agency."~~

Section 3. Section 39-5-401, MCA, is amended to read:

"39-5-401. ~~Investigative powers of director~~ Complaints against employment agencies. ~~(1) The director shall have supervisory and investigative authority over all employment agencies.~~ Upon receiving a complaint against any employment agency, ~~the director shall have the right to examine all books, documents, or records in its possession.~~ ~~In addition, the director may examine the office or offices where business is or shall be conducted by such agency.~~

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

~~(3) The director shall have authority to demand and examine at the employment agency's regular place of business all books, documents, and records in its possession for inspection.~~ department shall forward the complaint to the county attorney having jurisdiction in the matter. The county attorney may request or subpoena any documents related to the complaint.

NEW SECTION. Section 4. Functions of commissioner of labor and industry transferred -- name change. (1) The

functions of the commissioner of labor and industry contained in 39-5-103, 39-5-202 through 39-5-204, 39-5-206, 39-5-209, 39-5-301, 39-5-303, 39-5-311, and 39-5-403, which functions relate to administration and enforcement of The Employment Agency Act, are transferred to the department of commerce.

(2) In the provisions of the Montana Code Annotated listed in subsection (1) and in any legislation enacted by the 50th legislature relating to The Employment Agency Act, the term "director", meaning the commissioner of labor and industry, is changed to "department of commerce" or "department", meaning the department of commerce.

NEW SECTION. Section 5. Functions of department of labor and industry transferred -- name change. (1) The functions of the department of labor and industry contained in 39-5-205 and 39-5-402, which functions relate to administration and enforcement of The Employment Agency Act, are transferred to the department of commerce.

(2) In the provisions of the Montana Code Annotated listed in subsection (1) and in any legislation enacted by the 50th legislature relating to The Employment Agency Act, the term "department of labor and industry" or "department", meaning the department of labor and industry, is changed to "department of commerce" or "department", meaning the department of commerce.

SB 0341/03

1        NEW SECTION. Section 6. Effective date. This act is  
2 effective July 1, 1987.

-End-



STANDING COMMITTEE REPORT

HOUSE

MARCH 20

19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 341

do pass  
 do not pass

be concurred in  
 be not concurred in

as amended  
 statement of intent attached

REP. LES KITSELMAN

Chairman

AMENDMENTS AS FOLLOWS:

1) Page 4, lines 2 and 3  
Strike: "or other consideration"

2) Page 4, line 13  
Following: line 12  
Insert: "(2) No fee shall be solicited or accepted as  
an application or registration fee by any employ-  
ment agency solely for the purpose of being  
registered as an applicant for employment."  
Renumber: subsequent subsection

Rep. Simon will sponsor

*MS*

THIRD

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