

Approved: 3/29/95 la
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:09 a.m. on March 20, 1995 in Room 526-S of the Capitol.

All members were present except: Rep. Greg Packer - excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bev Adams, Committee Secretary

Conferees appearing before the committee: Rep. David Heinemann
Peter Grassl, Bowman & Marshall, Inc., Overland Park

Others attending: See attached list

Chairman Lane announced that the balloon showing the amendment to **SB 106**, that added the word *reasonable* on page 25, line 3 (see Attachment 2, minutes of March 17, 1995), was wrong. It is line 5 of the latest version of the bill.

Rep. Grant and Rep. Mason requested that their no vote of Friday, March 17, on the amendment to **SB 106** that added the word "reasonable" be recorded.

Rep. Pauls made a motion to pass out **SB 106** as amended. It was seconded by Rep. Geringer. Rep. Boston made a substitute motion to strike the word "reasonable" from page 25, line 5. It was seconded by Rep. Grant. The substitute motion was withdrawn.

Rep. Grant offered a substitute motion to amend **SB 106** by inserting after "policy" on page 25, line 5 *however, any written absenteeism policy shall be presumed reasonable.* (see Attachment 1) The motion was seconded by Rep. Mason. The motion failed.

The committee voted on the motion to pass out **SB 106** favorably as amended, motion carried. Rep. Standifer asked that her no vote be recorded.

Continued Hearing on: **HB 2292--Regulation of private employment agencies, excluding reports published through a computerized database**

Rep. Heinemann reviewed for the committee the main purpose for **HB 2292**, which had been heard earlier. The hearing had not been closed and the bill now lies in an exempt committee, Calendar and Printing. The bill was introduced by Rep. Heinemann for a constituent who is operating his computerized database employment agency under a letter from the Secretary of Human Resources that his business is one of the exempt entities. Rep. Heinemann offered an amendment to the bill (see Attachment 2) to delete the language in brackets and to add the other language. Rep. Heinemann answered questions from the committee.

Peter Grassl, Bowman & Marshal, appeared as an opponent of **HB 2292**. He feels that charging a person a fee to find employment is a gross injustice. People trying to find a job are the ones who can least afford the fee. He believes that individuals should not be charged a fee to find employment because of the potential for abuse of the consumer (see Attachment 3). He feels that if the committee wants to amend the wording of K.S.A. 44-401 to eliminate its confusing and misleading terminology, and state clearly once and for all, the policy of the legislature, it should be by reducing it to one simple sentence: *No person shall be charged a fee for locating employment within the State of Kansas.* Mr. Grassl concluded by answering questions.

Chairman Lane asked if there were any other proponents or opponents in the audience who wanted to testify on **HB 2292**. Seeing none, he closed the hearing on the bill.

Rep. Geringer made a motion to approve the minutes of Mar 13-16, it was seconded by Rep. Beggs. The motion carried and the minutes are approved as written.

Rep. Heinemann made a motion that at the proper time he would move to pass **HB 2292** out of committee. It was seconded by Rep. Mason. The motion carried.

Chairman Lane announced the next meeting will take place at the rail to take action on **HB 2292** after it is referred back to the committee.

The meeting adjourned at 9:58 a.m.

**HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST**

DATE March 20, 1995

NAME	REPRESENTING
Terry Leatherman	KCCT
Bud Grand	KCC
Mike Hein	Hein, Ebert + Wair
J. P. Small	Learjet, Inc.; Koch Ind.
Bill Small	BOEING
Jon Newman	KS Governmental Consulting
PETER O. GRASSL	BOWMAN & MARSHALL, INC.
John Thomas	KAPLAN + ASSOCIATES
Jim McHaff	KS AFF-CO

reasonable (added 3/17/95)

1 but not be limited to repeated absence, including lateness, from sched-
2 uled work if the facts show:

3 (A) The individual was absent without good cause;

4 (B) the absence was ~~substantially~~ *substantially* adverse to the employer's interests;
5 *in violation of the employer's written absenteeism policy; and*

6 (C) *the employer gave or sent written notice to the individual*
7 *that future absence will result in discharge; and*

8 ~~(G)~~ (D) the employer gave written notice to the individual that future
9 absence may result in discharge; and

10 ~~(D)~~ the individual continued the pattern of absence without good
11 cause the employee had knowledge of the employer's written absenteeism
12 policy.

13 (4) An individual shall not be disqualified under this subsection (b)
14 if the individual is discharged under the following circumstances:

15 (A) The employer discharged the individual after learning the indi-
16 vidual was seeking other work or when the individual gave notice of future
17 intent to quit;

18 (B) the individual was making a good-faith effort to do the assigned
19 work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory per-
20 formance due to inability, incapacity or lack of training or experience, (iii)
21 isolated instances of ordinary negligence or inadvertence, (iv) good-faith
22 errors in judgment or discretion, or (v) unsatisfactory work or conduct
23 due to circumstances beyond the individual's control; or

24 (C) the individual's refusal to perform work in excess of the contract
25 of hire..

26 (c) If the individual has failed, without good cause, to either apply
27 for suitable work when so directed by the employment office of the sec-
28 retary of human resources, or to accept suitable work when offered to
29 the individual by the employment office, the secretary of human re-
30 sources, or an employer, such disqualification shall begin with the week
31 in which such failure occurred and shall continue until the individual
32 becomes reemployed and has had earnings from insured work of at least
33 three times such individual's determined weekly benefit amount. In de-
34 termining whether or not any work is suitable for an individual, the sec-
35 retary of human resources, or a person or persons designated by the
36 secretary, shall consider the degree of risk involved to health, safety and
37 morals, physical fitness and prior training, experience and prior earnings,
38 length of unemployment and prospects for securing local work in the
39 individual's customary occupation or work for which the individual is rea-
40 sonably fitted by training or experience, and the distance of the available
41 work from the individual's residence. Notwithstanding any other provi-
42 sions of this act, an otherwise eligible individual shall not be disqualified
for refusing an offer of suitable employment, or failing to apply for suit-

,however, any written absenteeism policy
shall be presumed reasonable.

*House Business, Commerce & Labor
3/20/95
Attachment 1*

*Business, Commerce
& Labor
3/20/95
Attachment 1*

HOUSE BILL No. 2292

By Representative Heinemann

2-2

9 AN ACT concerning regulation of private employment services; excluding
10 certain computerized database reports; amending K.S.A. 44-401 and
11 repealing the existing section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 44-401 is hereby amended to read as follows: 44-
15 401. As used in K.S.A. 44-401 through 44-412; and amendments thereto:

16 (a) "Applicant" means any person who uses or attempts to use the
17 services of a private employment agency in seeking employment.

18 (b) "Employer" means a person employing or seeking to employ a
19 person for compensation, or any representative or employee of such a
20 person.

21 (c) "Fee" means anything of value, including money or other valuable
22 consideration or services or the promise of any of the foregoing, required
23 or received by a private employment agency in payment for any of its
24 services or any act rendered or to be rendered by the private employment
25 agency.

26 (d) "Person" means any individual, association, partnership or cor-
27 poration.

28 (e) (1) "Private employment agency" means any business which is
29 operated for profit in this state and which:

30 (A) Secures employment; or

31 (B) by any form of advertising holds itself out to applicants as able to
32 secure employment or to provide information or service of any kind pur-
33 porting to promote, lead to or result in employment for the applicant with
34 any employer other than itself.

35 (2) "Private employment agency" does not include:

36 (A) Any educational, religious, charitable, fraternal or benevolent or-
37 ganization which charges no fee for services rendered in securing em-
38 ployment or providing information about employment;

39 (B) any employment service operated by the state, the United States
40 or any political subdivision of the state, or any agency thereof;

41 (C) any temporary help service that at no time advertises or repre-
42 sents that its employee may, with the approval of the temporary help
43 service, be employed by one of its client companies on a permanent basis;

*Janice Brunson, Commerce & Labor
3/20/95*

Attachment 2

*Business, Commerce
& Labor
3/20/95
Attachment 2*

- 1 (D) any newspaper or publication of general circulation;
2 (E) any radio or television station; or
3 (F) any employment service where the fee is paid by the employer;
4 or
5 (G) ~~any report published through use of a computerized database~~
6 Sec. 2. K.S.A. 44-401 is hereby repealed.
7 Sec. 3. This act shall take effect and be in force from and after its
8 publication in the Kansas register.

any business that publishes employment information through the use a
computerized data base which, prior to July 1, 1993, received a written
statement from the secretary of human resources indicating that it was
not a private employment agency as defined in this subsection.

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TESTIMONY ON HB 2292

March 20, 1995

Good morning ladies and gentlemen.

My name is Peter Grassl and I am the owner of BOWMAN & MARSHALL, INC., a personnel search firm based in Overland Park. I'm here today to express my thoughts on an important piece of legislation affecting many of my fellow Kansans, as well as citizens from surrounding states.

I have been employed in the personnel search business since 1980. Prior to this profession, I was employed by a prominent grain company in Salina and an animal feed manufacturer in South Dakota. I left the company in Salina to seek new employment in the greater Kansas City area as an accountant. That search was my first encounter with having to pay a fee for employment. My reaction, which I think is typical of others, was one of apprehension because of the financial commitment required of me. Opportunities were passed up because of the need to potentially pay a fee for employment. For better or worse, I found a new opportunity in the personnel search business where I learned the policy was to charge the employer the fee because the employer was in a position to incur the fee and thus, did not prey upon individuals.

The bill introduced by Representative Heinemann would allow us to think the world of technology has finally reached the "private employment agency" business. Quite the contrary: whether it is a computerized database, 3 X 5 note cards, or a "Post-it" note, charging a person a fee to securing employment is the issue, not the mechanics. Plus, please recognize this is a consumer-rights issue.

*Business, Commerce
& Labor
3/20/95
Attachment 3*

Charging a person a fee to find employment is a gross injustice. This is a person that is attempting to find a job to support themselves and/or family versus draining the welfare system. The people that end up paying a fee for employment are usually the ones who can least afford the fee. This legislation would put another road block in the path of those seeking to take care of themselves at a time in this country and state when individuals are being encouraged to take greater personal responsibility.

Additionally, when a person pays a fee, the commitment for continued employment is uni-directional. That is to say the employer is not bound to continue the employment through the new employees payment period, but the person is legally bound to pay regardless of the duration of employment whether it is termination or resignation. The performance of the contract needs to be placed upon the employer not the "private employment agency" and job seeker.

Prepayment of fees is equally as bad for many of the same reasons. This is the situation with the two firms that would be "grandfathered." This system preys upon individuals. It restricts the flow of commerce by imposing barriers to securing employment. This system misleads the person into thinking a job is close at hand when there is (and let me emphasize this point) no guarantee of performance by the employment agency, except the trip to the bank to deposit the fee.

The legislation does not address potential problems. What is to prevent the two "grandfathered" firms from franchising their concept, to raising their fee to levels that are tantamount to extortion. Nor is there any funding or clear mechanism for regulating these two companies or for the Attorney General to investigate alleged claims of abuse.

Kansas set an example for the nation some twenty years ago by outlawing what is called "applicant paid fees" and thus stepping in to protect the rights of the job-seeking consumer. Other states have followed the trend by overturning similar regulations which prevents these unscrupulous fees from being charged. Now is not the time to turn back the calendar just because of advances of technology. The principle in the 1970's is still germane: individuals should not be charged a fee to find a employment because of the potential for abuse of the consumer.

Lastly, the wording of K.S.A. 44-401 etc. is confusing and this has resulted in the yearly introduction of legislation which seeks to cut the corners of the employment business only to benefit two companies, not the 200 or so successful personnel staffing service firms operating in Kansas today. If this committee truly wishes to alter the wording of K.S.A. 44-401 and successive paragraphs today so as to eliminate it's confusing and misleading terminology, and state clearly once and for all, the policy of the legislature, please consider reducing 44-401 to this simple one sentence: *No person shall be charged a fee for locating employment within the state of Kansas.*

Thank you for your time.