

**SENATE BILL NO. 2079**

Introduced by

Industry, Business and Labor Committee

(At the request of the Labor Commissioner)

1 A BILL for an Act to amend and reenact subsection 4 of section 34-13-01, sections 34-13-03  
2 and 34-13-12, subsection 2 of section 34-13-13.1, and subsection 1 of section 34-13-15 of the  
3 North Dakota Century Code, relating to definition of employment agent or employment agency  
4 and licensure of employment agencies.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsection 4 of section 34-13-01 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 4. "Employment agent" or "employment agency" means any person, firm, corporation,  
9 limited liability company, or association in this state engaged for hire or  
10 compensation in the business of furnishing:

11 a. Persons seeking employment or changing employment, with information or  
12 other service enabling or tending to enable such persons to procure  
13 employment, by or with employers, other than such employment agent; or

14 b. Any other person, firm, corporation, limited liability company, or association  
15 who may be seeking to employ or may be in the market for help of any kind,  
16 with information enabling or tending to enable such other person, firm,  
17 corporation, limited liability company, or association to procure such help.

18 The term "employment agent" or "employment agency" does not include any  
19 person, firm, corporation, limited liability company, or association employing  
20 individuals to render part-time or temporary services to or for a third person, if the  
21 person, firm, corporation, limited liability company, or association employing the  
22 individuals, in addition to wages or salaries, pays social security and  
23 unemployment insurance taxes, provides workers' compensation coverage, and is  
24 responsible for the acts of the employees while rendering services to or for a third

1            person. The term "employment agent" or "employment agency" does not include a  
2            person, firm, corporation, limited liability company, or association charging service  
3            fees or any other charges exclusively to employers.

4            **SECTION 2. AMENDMENT.** Section 34-13-03 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6            **34-13-03. License application - Schedule of fees - License issuance and**  
7 **revocation.** Annually, every applicant for a license shall file with the commissioner a written  
8 application stating the name and address of the applicant, the street and number of the building  
9 in which the employment agency is to be maintained, the name of the person who is to have the  
10 general management of the office, the name under which the business of the office is to be  
11 carried on, whether or not the applicant is pecuniarily interested in any other business of a like  
12 nature, and if so, where. Such application must also state whether the applicant is the only  
13 person pecuniarily interested in the business to be carried on under the license and must be  
14 signed by the applicant and sworn to before a notary public. If the applicant is a corporation,  
15 the application must state the names and addresses of the officers and directors of the  
16 corporation and must be signed and sworn to by the president and treasurer thereof. If the  
17 applicant is a limited liability company, the application must state the names and addresses of  
18 the managers and governors of the limited liability company and must be signed and sworn to  
19 by the president and treasurer thereof. If the applicant is a partnership, the application must  
20 also state the names and addresses of all partners therein and must be signed and sworn to by  
21 ~~all of them~~ the managing partner or partners. The application must also state whether or not  
22 the applicant is, at the time of making application, or has at any previous time been, engaged or  
23 interested in, or employed by anyone engaged in, the business of conducting an employment  
24 agency, either in this state or any other, and if so, when and where. The application must also  
25 give as reference the names and addresses of at least three persons of reputed business or  
26 professional integrity, located within the state. Every applicant for a license to engage in the  
27 business of an employment agent shall, at the time of making application for said license, file  
28 with the commissioner a schedule of the fees or charges to be collected by such employment  
29 agent for any services rendered, together with all rules and regulations that may in any way  
30 affect the fees charged or to be charged for any service. Such fees and such rules or  
31 regulations may thereafter be changed by filing an amended or supplemental schedule showing

1 such charges, with the commissioner. It is unlawful for any employment agent to charge,  
2 demand, collect, or receive a greater compensation for any service performed by the agent than  
3 is specified in such schedule filed with the commissioner.

4 The commissioner may issue a license to an employment agent and refuse to issue a  
5 license if, after due investigation, the commissioner finds that the character of the applicant  
6 makes the applicant unfit to be an employment agent, or when the premises for conducting the  
7 business of an employment agent are found to be unfit. The commissioner may revoke a  
8 license upon due notice to the holder of the license and upon due cause. Failure to comply with  
9 the duties, terms, conditions, or provisions of this chapter, or any lawful orders of the  
10 commissioner is due cause to revoke a license.

11 **SECTION 3. AMENDMENT.** Section 34-13-12 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **34-13-12. Schedule of charges posted and printed on receipts - Sections of law**  
14 **posted - Information given to applicant for employment.** Every employment agent  
15 possessing a valid license shall post in a conspicuous place in a room used for business  
16 purposes in the employment office and which is open to the public, a schedule showing the  
17 amount of the service charges to be made to ~~either employees, employers, or both~~. The  
18 amount collected may not exceed the schedule of charges indicated.

19 A licensed employment agent shall post in a conspicuous place in a room used for  
20 business purposes in the employment office a copy of sections 34-13-12 and 34-13-15,  
21 provided by the commissioner.

22 No employment agent holding a license may direct any applicant to apply for  
23 employment at any place outside of the office of such employment agent without first giving to  
24 such applicant, in written form, the name and address of the employment agent, the name of  
25 the applicant, the name and address of the person to whom the applicant is referred, and the  
26 kind of employment supposed to be obtainable at such place. Nothing herein may be  
27 construed to prohibit an employment agent from directing an applicant by telephone to apply for  
28 employment, but such telephone message must be confirmed in writing by the employment  
29 agent within twenty-four hours after the telephone conversation, and a ~~earthen~~ copy of such  
30 confirmation must be kept on file at the place of business of the employment agent for a period  
31 of one year.

1           **SECTION 4. AMENDMENT.** Subsection 2 of section 34-13-13.1 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3           2. ~~This section applies to all licensees.~~ Every ~~licensee~~ employment agency shall  
4 submit copies of all contracts and fee schedules used by ~~such~~ the agency or agent  
5 to the commissioner of labor for approval. No contract or fee between a ~~licensee~~  
6 an employment agency and ~~an employer or~~ an employee is valid without the  
7 commissioner's approval. In approving or disapproving such contracts and fees,  
8 the commissioner shall issue a written determination. This determination is subject  
9 to review and appeal under chapter 28-32.

10           **SECTION 5. AMENDMENT.** Subsection 1 of section 34-13-15 of the North Dakota  
11 Century Code is amended and reenacted as follows:

12           1. Every license, ~~of whatever classification,~~ must be hung in a conspicuous place in  
13 the main office of the employment agency.