

1973 Assembly Bill 500

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CHAPTER 226, Laws of 1973

AN ACT to repeal 105.01 (2) (intro.); to renumber 105.01 (1) and (2) (a) to (d); to amend 105.01 (1) (intro.) and (b), as renumbered, 105.02, 105.03, 105.05 (1), 105.06, 105.07 (1), 105.08, 105.09, 105.10, 105.12, 105.13 and 105.14; to repeal and recreate 105.01 (intro.), 105.11 and 105.16; and to create 105.01 (1) (e), (2) and (3) of the statutes, relating to the regulation and licensing of private employment agents.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 105.01 (intro.) of the statutes is repealed and recreated to read:

105.01 Definitions. (intro.) As used in this chapter:

SECTION 2. 105.01 (1) and (2) (a) to (d) of the statutes are renumbered 105.01 (1) (intro.) and (a) to (d), respectively, and 105.01 (1) (intro.) and (b), as renumbered, are amended to read:

105.01 (1) (intro.) ~~Means~~ “Employment agent” means all persons who furnish to persons seeking employment, information enabling or tending to enable such persons to secure the same, or who furnish employers seeking laborers or other help of any kind, information enabling or tending to enable such employers to secure such help, or who keep a register of persons seeking employment or help as aforesaid, whether such agents conduct their operations at a fixed place of business, on the streets or as transients, and also whether such operations constitute the principal business of such agents or only a ~~side line~~ sideline or an incident to another business. Employment agent does not include:

(b) Any temporary help service defined as any person employing individuals to render part-time or temporary services to, for or under the direction of a 3rd person, if ~~the~~:

1. The person employing the individuals in addition to wages or salaries pays federal social security taxes, state and federal unemployment, contributions or taxes, carries workmen’s compensation insurance as required by state law and maintains liability insurance covering the acts of its employes while rendering services to, for or under the direction of a 3rd person; and

2. Whose contracts with its employes do not contain any provision requiring the forfeiture or payment of any amount by the employe as liquidated damages upon the acceptance of permanent employment by an employe with a 3rd person who has received his part-time or temporary services.

SECTION 3. 105.01 (1) (e) of the statutes is created to read:

105.01 (1) (e) An employment counselor.

SECTION 4. 105.01 (2) (intro.) of the statutes is repealed.

SECTION 5. 105.01 (2) and (3) of the statutes are created to read:

105.01 (2) “Employment counselor” means any placement manager, placement director, interviewer or any other person employed by an employment agency who interviews, counsels or confers with job applicants or employers for the purpose of placing or procuring job applicants. This term does not include employes of an employment agency who are primarily engaged in clerical or administrative occupations.

(3) “Department” means the department of industry, labor and human relations.

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SECTION 6. 105.02 of the statutes is amended to read:

105.02 False statements and representation. ~~No~~ A person or his employe or agent, shall not make any false statement to any person furnishing or seeking employment, ~~knowing the same to be false,~~ in regard to any employment, work or situation, its nature, location, duration, wages ~~or,~~ salary or placement fee attached thereto, or the circumstances surrounding the employment, work or situation. ~~No~~ An employment agent shall not offer or hold himself out as in a position to secure or furnish employment without having an order therefor from an employer; ~~and no~~ however, an applicant may be referred to an employer provided a bona fide appointment for the interview has been arranged by the employment agent. An employment agent shall not misrepresent any ~~other~~ material matter in connection with any employment, work or situation he may offer or hold himself out in a position to secure.

SECTION 7. 105.03 of the statutes is amended to read:

105.03 (title) Inquiry into truth of statements. Every employment agent shall assure himself ~~beyond a reasonable doubt~~ that any representations whatsoever, whether spoken, written or advertised in printed form, which he makes with regard to any employment, work or situation, and which leads or may lead persons to seek such employment, work or situation, are true to the best of his knowledge and cover all the material facts affecting the employment in question.

SECTION 8. 105.05 (1) of the statutes is amended to read:

105.05 (title) Agent's license. (1) No person ~~shall~~ may engage in the business of an employment agent for profit, or receive any fee, charge, commission or other compensation, directly or indirectly, for services as an employment agent, including modeling agencies which secure work for persons to act as live models or to model for photography, without first having obtained a license from the department ~~of industry, labor and human relations~~ and executing a bond ~~as hereinafter provided under s. 105.06.~~ The license shall constitute a license constitutes permission from this state to operate as an employment agent for compensation ~~and shall.~~ It is not be transferable to ~~any other person or inure to or for~~ the benefit of any person other than the licensee. A person licensed under this section shall not transact business as an employment agent at more than one office location or place of business without having first obtained from the department a separate license for each additional office in accordance with the provisions of this chapter.

SECTION 9. 105.06 of the statutes is amended to read:

105.06 Application; bond. Application for ~~the foregoing~~ an employment agent's license shall be made to the department and ~~shall be~~ accompanied by a bond in due form to the state for the penal sum of \$5,000 issued by a surety company licensed to

do business in this state to be approved by the department, conditioned that the agent will conform to and not violate ~~any of the duties, terms, conditions or requirements of ss. 105.01 to 105.15~~ this chapter or the rules of the department issued thereunder.

SECTION 10. 105.07 (1) of the statutes is amended to read:

105.07 (title) Agent's fees. (1) Each ~~such~~ employment agent's license shall be renewed annually. The ~~fee for such~~ license or renewal fee shall be one per cent of all fees, charges, commissions or other compensation actually received during the life of the license or renewal by an employment agent for service as such but in no event ~~shall such fee be~~ less than \$50 nor more than \$300. The original license and annual renewal fee for a branch office or each additional place of business in the same community shall be \$150.

SECTION 11. 105.08 of the statutes is amended to read:

105.08 Authority of department. The department ~~is vested with~~ has the power and jurisdiction to ~~have such supervision of~~ supervise every employment agent agency as ~~may be~~ is necessary to adequately ~~to~~ enforce and administer all laws and lawful orders designed to prevent fraud, misrepresentations, false statements, or other unauthorized acts of such employment agent.

SECTION 12. 105.09 of the statutes is amended to read:

105.09 Visitorial power. Any commissioner or deputy may enter any employment office or the place of business of any employment agent for the purpose of collecting facts and statistics, examining the records or registers kept by ~~such the~~ employment agent, and bringing to the attention of ~~such the~~ agent any law or any order of the department, or any failure on the part of ~~such an~~ employment agent to comply therewith. No employment agent ~~shall~~ may refuse to admit any commissioner or deputy to his place of business.

SECTION 13. 105.10 of the statutes is amended to read:

105.10 Inquisition. Any employment agent receiving from the department any blanks calling for information required by it to carry into effect ~~ss. 105.01 to 105.15 this chapter and rules promulgated thereunder,~~ with directions to fill the same, shall cause the same to be properly filled out so as to answer fully and correctly each question ~~therein propounded, and in case he is unable to answer any question, he shall give a good and sufficient reason for such failure, and said answer shall be verified by 2 witnesses,~~ and returned to the department at its office within the period fixed by the department.

SECTION 14. 105.11 of the statutes is repealed and recreated to read:

105.11 Schedule of fees or charges. (1) Every applicant for a license or renewal of a license to engage in the business of an employment agent shall file with the department, within a time fixed by the department, a schedule of the fees or charges made by such employment agent to applicants for employment and to employers for any services rendered together with all rules or regulations that may, in any manner, affect the fees charged or to be charged for any service. Fees charged to applicants for employment and such rules or regulations affecting applicants for employment may be changed only with the approval of the department and when changed shall be filed with the department.

(2) The department may, under s. 105.14, fix a schedule of maximum fees charged by employment agents to applicants for employment for services rendered.

(3) An employment agent shall not charge, demand, collect or receive a greater compensation for any service performed by him than is specified in the schedules filed with the department, and no registration fee may be charged without permission from the department.

(4) Prior to any commitment to hire, each employment agent shall advise each employer using his services of the fee schedule to which he will be obligated.

(5) No employer shall charge an employe or applicant for employment placed by an agency any amount as a direct or indirect placement fee that is greater than that permitted by departmental rule. If the total charges made by the employer and the employment agent to the employe exceed the allowable maximum set by the department, the department may, under s. 101.21, recover the overcharge from the employer plus a penalty equal to the overcharge.

(6) No private employment agency may charge the applicant for employment a fee for counseling or require the applicant to purchase a counseling service as a condition for accepting the applicant's application.

SECTION 15. 105.12 of the statutes is amended to read:

105.12 Prohibited practices. No applicant shall be placed in any employment by an employment agent in violation of any statute ~~or of any order, or rule or regulation~~ of the department. Examinations given by a private employment agency may be for job-related skills only.

SECTION 16. 105.13 of the statutes is amended to read:

105.13 (title) Refusal to issue; suspension or revocation of license. The department may issue licenses to employment agents, and refuse to issue such a license whenever, after ~~due~~ investigation, the ~~commission~~ department finds that the character of the applicant makes him unfit to be an employment agent, or when the premises for conducting the business of an employment agent is found upon investigation to be unfit for such use, ~~or whenever, upon investigation by the department, it is found and determined that the number of licensed employment agents or that the employment agency operated by the United States, the state or by the municipality or by 2 or more thereof jointly in the community in which the applicant for a permit proposes to operate is sufficient to supply the needs of employers and employes.~~ Any such license granted by the department may also be suspended or revoked by it upon ~~due~~ notice to the ~~holder of said license, licensee and upon due good cause shown.~~ Failure to comply with ~~the duties, terms, conditions or provisions of ss. 105.01 to 105.15 this chapter and rules promulgated thereunder,~~ or with any lawful orders of the department, ~~shall be deemed due~~ is cause to suspend or revoke such a license.

SECTION 17. 105.14 of the statutes is amended to read:

105.14 Regulations; records; reports. The department ~~shall have power, jurisdiction and authority to may fix and order such~~ reasonable rules for the conduct of the business of any employment agent or employment agency as may be are necessary ~~adequately~~ to carry out ~~ss. 105.01 to 105.15; to ascertain and this chapter.~~ The department may fix reasonable classifications of employments or positions and ~~to~~ fix a reasonable scale of fees to be charged by ~~said employment agent or agents to applicants for employment~~ for each ~~such~~ classification under within the restrictions contained in ~~ss. 105.01 to 105.15 this chapter,~~ and may fix reasonable classifications of the business of employment agents, and ~~to~~ make its rules and orders conform to ~~such these~~ classifications. It may prescribe the form of books, registers or records to be kept by the employment agent, the receipts or copies of contracts to be handed to persons referred to employment, the reports to be made to the department, the refunds

to be made to applicants who failed to secure employment; and it may order any other measures reasonably necessary to protect the public, ~~or~~ persons seeking employment, employers or employes seeking help, against fraud, misrepresentation, or any other unauthorized act of any employment agent.

SECTION 18. 105.16 of the statutes is repealed and recreated to read:

105.16 Penalty for late fees and reports. Every employment agent shall submit all fees, license renewal applications and reports within the time limitations or due dates specified by the department. A penalty fee of \$5 per day for each day such fee, application or report is overdue may be levied by the department.
