

ACT 135

H.B. NO. 229

A Bill for an Act Relating to Commercial Employment Agencies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 373-1, Hawaii Revised Statutes, is amended to read as follows:

“§373-1 Definitions. As used in this chapter[:], unless the context otherwise requires:

- (1) “Director” means the director of commerce and consumer affairs.
- (2) “Employment agency” means any individual, agent, partnership, corporation, or association, engaged in the business of providing employment information, procuring employment for applicants, or procuring employees for placement with employers upon request, for a fee or other valuable thing, exacted, charged, or received, but

shall not include the United States or the State of Hawaii or instrumentalities thereof.

- (3) "Employer" includes any individual, agent, partnership, corporation, or association, employing or seeking to employ any person for hire.
- (4) "Applicant" means any person who uses the services of an employment agency to secure employment for himself.
- (5) "Gross wages, salaries, or commissions" means the gross amount of the applicant's actual earnings from employment.]

"Actual earnings from employment" means the total compensation, including reported amount of tips for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation, but shall not include the reasonable cost to an employer of furnishing an employee with fringe benefits or board, lodging, or other facilities and non-cash gratuities of any kind.

"Applicant" means any person who uses the services of an employment agency to secure employment for that person.

"Branch office" means an employment agency office maintained away from the principal employment agency office.

"Director" means the director of commerce and consumer affairs.

"Employer" means any individual, partnership, corporation, or association, employing or seeking to employ any person for hire.

"Employment agency" means any individual, partnership, corporation, or association engaged in the business of providing employment information, procuring employment for applicants, or procuring employees for placement with employers upon request, for a fee or other valuable thing, exacted, charged, or received, but shall not include the United States or the State or instrumentalities thereof.

"Gross wages, salaries, or commissions" means the gross amount of the applicant's actual earnings from employment.

"Principal agent" means the responsible managing agent who is responsible for managing an employment agency."

SECTION 2. Section 373-2, Hawaii Revised Statutes, is amended to read as follows:

"§373-2 License required. No employment agency shall engage in business without a license obtained under this chapter and the rules [and regulations] of the director."

SECTION 3. Section 373-3, Hawaii Revised Statutes, is amended to read as follows:

"§373-3 [License fee.] Fees; biennial renewal; restoration. [Every employment agency shall pay an annual license fee of \$37.50.

- (1) The fee shall be paid to the director on or before July 1 of each year.
- (2) Failure to pay the annual license fee shall constitute a forfeiture of license.
- (3) Fees collected by the director shall be deposited in the general fund of the State.]

No applicant shall be examined under this chapter until the appropriate fees have been paid. The director shall establish the amount for application, examination, license, restoration, and renewal fees by rules adopted pursuant to chapter 91. All fees shall be deposited with the director of finance to the credit of the general fund.

Every person holding a license under this chapter shall register with the director and pay a biennial fee on or before June 30 of each even-numbered year. Failure to pay the biennial fee shall constitute a forfeiture of the license as of the date of expiration. Any license so forfeited may be restored within one year after the expiration upon filing of an application and payment of a restoration fee."

SECTION 4. Section 373-5, Hawaii Revised Statutes, is amended to read as follows:

"§373-5 Application for license. (a) Every individual, [agent,] partnership, corporation, or association seeking a license to operate an employment agency shall file a written application with the director which shall contain such information and shall be in such form as the director may prescribe; provided that in addition to complying with all other requirements of this chapter, no license shall be issued unless the applicant has either passed a certified employment consultant examination as designated by the director[. Such examination shall cover the following requirements:] or has in its employ a principal agent.

(b) Every principal agent shall file a written application with the director which shall contain such information and shall be in such form as the director may prescribe and no license shall be issued unless the applicant has passed a certified employment consultant examination as designated by the director.

The examination shall cover the following:

- (1) Interview principles and techniques;
- (2) Job descriptions and specifications;
- (3) Placement procedure, including [(recruitment, solicitation, and referral)];
- (4) Aids for applicants;
- (5) Agency management;
- (6) General principles of business law; and
- (7) State statutes [including] and rules [and regulations] relating to an employment agency.

(c) A principal agent who does not engage in the employment agency business in the State during the succeeding year shall not be required to pay the renewal fee as long as the principal agent remains inactive. Should the principal agent wish to resume work as a principal agent at some future time, the principal agent shall so notify the director and remit the renewal fee for the current biennial period.

[This section shall not apply to persons holding valid licenses on June 1, 1982.]

(d) An employment agency shall file a written application for a branch office with the director which shall contain such information and shall be in such form as the director may prescribe."

SECTION 5. Section 373-7, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 373-11, Hawaii Revised Statutes, is amended to read as follows:

"§373-11 Prohibitions. No employment agency licensed under this chapter and no agent or employee of an employment agency shall do, make, or cause to be made or done any of the following acts herein prohibited and every such employment agency, its agents, and employees shall do and perform every act, duty, or requirement hereinafter prescribed.

- (1) No employment agency shall cause to be printed, published, or circulated any false, fraudulent, or misleading information, notice,

- or advertisement, nor shall an employment agency give or cause to be made or given any false promise, misrepresentation, or misleading statement or information.
- (2) No employment agency shall send out any applicant for employment without having first obtained either orally or in writing a bona fide job order from the prospective employer.
 - (3) No employment agency shall knowingly send out any applicant for employment to any place where a strike, walk-out, or other labor dispute exists without first furnishing the applicant with a written statement as to the existence of the labor dispute, and the employment agency shall retain on file for two years after the date thereof, a copy of the statement of fact, signed by the applicant so sent.
 - (4) No employment agency shall divide or share, or offer to divide or share with any employer, his employees, agents, or representatives, any fee, charge, or compensation received from any applicant. No employment agency shall cause or attempt to cause the discharge of any person not an employee of the employment agency for the purpose of obtaining other employment through the agency for such person.
 - (5) No employment agency shall send out any minor applicant for employment without making an investigation of the nature of the employment or engagement and the duties thereof and reputation of the employer. No employment agency shall wilfully or knowingly send or direct any applicant for employment to any employment of an immoral character. No employment agency shall wilfully or knowingly procure or place or attempt to place any minor in any employment in any place where intoxicating liquors are served or sold.
 - (6) No employment agency shall wilfully or knowingly place or assist in placing any applicant in employment in violation of any law of this State or any lawful order, rule, or regulation prescribed by the director.
 - (7) No employment agency shall require an applicant to pay any advance fee or any other fee, deposit, or compensation other than as prescribed in this chapter.
 - (8) No employment agency shall display, on any sign or window or in any publication the name "United States Employment Service" or "State of Hawaii Employment Service".
 - (9) No employment agency or any person connected therewith shall receive or require any applicant to execute any power of attorney, promissory note, negotiable instrument, assignment of wages or salary, note authorizing a confession of judgment, or any instrument or document relating to the liability of the applicant, unless this instrument or other document has been approved both as to form and content by the director or [his] the director's authorized representative.
 - (10) No employment agency or any person connected therewith shall make representations to applicants concerning prospective positions, the character and probable length of employments, hours, salary, and other relevant terms and conditions of employment which are not, to the best of its knowledge, accurate.

- (11) No employment agency shall withhold from applicants written disclosure of any fees or charges for services rendered prior to the rendering of such services.
- (12) No employment agency shall provide information relating to an applicant's personal record, employment[,] record, qualifications, and salary requirement to an employer directly, by mail, or otherwise, unless such information is accurate and complete to the best of its knowledge.
- (13) No employment agency shall charge an applicant any fee or service charge until such time as an applicant is employed by an employer as a result of the employment agency's efforts[.] and has received actual earnings from employment.
- (14) No employment agency shall require the employer to withhold from the applicant's actual earnings from employment any fee or service charge that has been negotiated by contract between the applicant and the employment agency unless the withholding of such fee or service charge is specifically authorized or requested, by full signature, in writing by the applicant."

SECTION 7. Chapter 373, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§373- Requirements to maintain license. Every employment agency shall have and maintain in full force and effect a bond as required under section 373-4. Failure, refusal, or neglect to maintain a bond in full force and effect shall cause the automatic suspension of the license effective as of the date of expiration or cancellation of the bond. The license shall not be reinstated until a bond as required under section 373-4 is received by the director.

Failure to effect a reinstatement of a suspended license within sixty days of the suspension shall cause the license and all fees to be forfeited.

The director may assess a fee not to exceed \$200 as a condition for the reinstatement of a license suspended pursuant to this section.

A licensee, within fifteen calendar days after receipt of notification of the license forfeiture, may request an administrative hearing pursuant to chapter 91 to review the suspension."

SECTION 8. Chapter 373, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§373- Exemption of vocational rehabilitation services. Providers of vocational rehabilitation services for injured workers covered by approved worker compensation plans under section 386-25 shall not be considered employment agencies under this section; provided that the providers confine their services to those specified under section 386-25 and do not hold themselves out to the public as employment agencies under this chapter."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 10. This Act shall take effect on January 1, 1986.

(Approved May 28, 1985.)

Note

1. Edited pursuant to HRS §23G-16.5.