

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 by amending the definition of "principal agent" to read as follows:

““Principal agent” means the responsible managing agent who is responsible for managing an employment agency[.] and who is responsible for all business transactions and actions by the agency’s employees.”

SECTION 2. Section 373-3, Hawaii Revised Statutes, is amended to read as follows:

“**§373-3 Fees; biennial renewal; restoration.** (a) No applicant shall be examined under this chapter until the appropriate fees have been paid.

(b) Every person holding a license under this chapter shall register with the director and pay a biennial renewal fee on or before June 30 of each even-numbered year. Failure to pay the ~~biennial~~ renewal 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]~~ the renewal and restoration [fee-] fees.

(c) All fees shall be as provided in rules adopted by the director pursuant to chapter 91.”

SECTION 3. Section 373-4, Hawaii Revised Statutes, is amended to read as follows:

“**§373-4 Bond.** ~~[Each licensed]~~ Every employment agency that collects fees from applicants shall give and keep in force a bond with the director in the penal sum of \$5,000 with good and sufficient surety or sureties approved by the director, conditioned[.] that:

- (1) ~~[That the]~~ The licensee shall not violate this chapter[.]; and
- (2) ~~[That the]~~ The licensee shall faithfully, promptly, and truly refund all fees illegally or incorrectly obtained from applicants to the director.”

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

“**§373-5 Application for license.** (a) Every individual, partnership, corporation, or association seeking a license to operate an employment agency shall file a written application with the director ~~[which]~~ that 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 either has ~~[either]~~ passed a certified employment consultant examination as designated by the director or has in ~~[its]~~ the applicant’s employ a principal agent.

(b) Every principal agent shall file a written application with the director ~~[which]~~ that 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 and rules 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.

(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.] Every applicant, including all officers, directors, partners, members, or managers of the applicant, shall possess a reputation for honesty, truthfulness, financial integrity, and fair dealing and shall not have been convicted of a felony directly related to the operation of a commercial employment agency, unless the conviction has been expunged or annulled.~~”

SECTION 5. Section 373-6, Hawaii Revised Statutes, is amended to read as follows:

“**§373-6 Issuance of license.** (a) Upon receipt of an application for a license to conduct an employment agency, the director may ~~[order the issuance of]~~ issue the license [provided that] if the [application is complete and in proper form.] applicant has met the requirements of this chapter and chapter 436B.

(b) ~~Every license issued shall be valid only as to the employment agency and [premises named therein. The location of an employment agency shall not be changed without the written consent of the director and such change of location shall be endorsed on the license.] any branch offices of the employment agency.~~

(c) No license shall be issued to an employment agency that establishes or maintains a place of business in, or conducts business from, a home, apartment, hotel room, or any other location where the premises may be considered not in the public interest, unless approved by the director.

~~[The]~~ (d) A license issued under this chapter shall not be transferable [except on approval of the director].”

SECTION 6. Section 373-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) ~~Each employment agency shall file [at least once a year with the director a] with its application, an initial schedule of [its] placement fees to be charged to applicants [at such time and in the manner and form as prescribed by the director. The director shall annually compile a listing of the fees charged by all commercial employment agencies licensed under this chapter and make such list]. Any change to the schedule of placement fees shall be filed with the director within thirty days of the change, unless the time is extended by the director for good cause. The schedule of placement fees shall be available to the general public at the department.~~”

SECTION 7. Section 373-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any contract between an applicant and the employment agency shall be in writing and shall contain:

- (1) In bold print enclosed within a conspicuous border, the gross amount of the estimated fee to be charged and the time period on which the fee is based;
- (2) A statement indicating that the fees charged are in accordance with the schedule of placement fees filed with the department [~~and that a listing of the fees charged to applicants by all commercial employment agencies licensed in the State is available for public inspection~~];
- (3) A prominently displayed statement that no fees shall be paid until the job applicant obtains employment and receives the first paycheck, provided that this shall not apply to employer fee paid placements;
- (4) The name and license number of the commercial employment agency; and
- (5) A statement that the applicant has the right to have the agency produce for review a copy of the law and rules regulating the practices of commercial employment agencies.

A copy of the contract shall be provided to the applicant. The director may adopt rules pursuant to chapter 91 to prescribe the form and content of the contract.”

SECTION 8. Section 373-11, Hawaii Revised Statutes, is amended to read as follows:

“**§373-11 Prohibition.** 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 resume or 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, the employer’s 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 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~~[,]~~, and the employer has expressed an interest in the applicant.
- (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 9. Section 373-13.5, Hawaii Revised Statutes, is amended to read as follows:

“[H]§373-13.5[H] Requirements to maintain license. (a) Every employment agency that collects fees from applicants 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]~~ forfeiture of the license effective as of the date of expiration or cancellation of the bond. The license shall not be ~~[reinstated]~~ restored until a bond as required under section 373-4 is received by the director.

(b) Failure to effect a ~~[reinstatement]~~ restoration of a ~~[suspended]~~ forfeited license within sixty days of the [suspension] forfeiture shall cause the license [and all fees] to [be] remain forfeited. No fees paid shall be refundable. A licensee who

fails to restore a license as provided in this section shall apply and pay fees as a new applicant.

(c) The director may assess a fee not to exceed \$200 as a condition for the ~~[reinstatement]~~ restoration of a license ~~[suspended]~~ forfeited pursuant to this section.

(d) 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.]~~ forfeiture.

(e) Every employment agency shall have in its employ a principal agent who is currently licensed under this chapter. The principal agent shall be responsible for the direct management of the employment agency, all business transactions of the employment agency, and all actions by the employees of the employment agency.

(f) No employment agency shall be deemed to have violated any provision of this chapter by acting or assuming to act as an employment agency after the death or dissociation of the principal agent responsible for managing the employment agency; provided that within sixty days from the date of the death or dissociation of the principal agent, the employment agency employs another licensed principal agent or employs an individual who has filed an application for a principal agent license.”

SECTION 10. Section 373-14, Hawaii Revised Statutes, is amended to read as follows:

“§373-14 Revocation ~~[and cancellation.]~~, suspension, and fines. In addition to any other actions authorized by law, after affording all interested parties reasonable opportunity for a fair hearing, the director may revoke or ~~[cancel]~~ suspend any license, or impose a fine not to exceed \$1,000 per violation, for cause. In addition to any other grounds for disciplinary action authorized by law, ~~[cause]~~ “cause” means violation of this chapter or a rule of the director.”

SECTION 11. Section 373-19, Hawaii Revised Statutes, is amended to read as follows:

“§373-19 Powers and duties. In addition to any other powers and duties authorized by law, the director may adopt, amend, or repeal such rules as the director may deem proper to fully effectuate this chapter~~[-]~~ and may delegate to the executive officer or other designee any powers or duties the director deems reasonable and proper.”

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved April 12, 2002.)