

# STATE OF NEW YORK

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1069

2017-2018 Regular Sessions

## IN SENATE

January 6, 2017

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Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the general business law, in relation to employment agencies; and to amend a chapter of the laws of 2016, amending the general business law relating to employment agencies, as proposed in legislative bills numbers S. 8102 and A. 10672, in relation to the effectiveness thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph b of subdivision 2 of section 173 of the general  
2 business law, as amended by a chapter of the laws of 2016, amending the  
3 general business law relating to employment agencies, as proposed in  
4 legislative bills numbers S. 8102 and A. 10672, is amended to read as  
5 follows:

6 b. The application for a license shall be accompanied by samples or  
7 accurate facsimiles of each and every form which the applicant for a  
8 license will require applicants for employment to execute, and such  
9 forms must be approved by the commissioner before a license may be  
10 issued. The commissioner shall approve any such forms which fairly and  
11 clearly represent contractual terms and conditions between the proposed  
12 employment agency and applicants for employment, such as are permitted  
13 by this article. [~~The commissioner shall determine in his or her~~

14 ~~discretion, which languages to provide, in addition to English, based on~~  
15 ~~the size of the state population that speaks each language and any other~~  
16 ~~factor the commissioner deems relevant. All forms shall be made avail-~~  
17 ~~able to employment agencies in such a manner as determined by the~~  
18 ~~commissioner.]~~

19 The commissioner shall make all forms required pursuant  
20 to this article available to employment agencies in languages other than  
21 English, including any other language that the commissioner determines,  
22 in his or her discretion, based on the size of the New York population  
that speaks each language and any other factor that the commissioner

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 deems relevant. An employment agency shall not be penalized for errors  
2 or omissions in the non-English portions of any forms provided by the  
3 commissioner.

4 § 2. Subdivision 1 of section 174 of the general business law, as  
5 amended by a chapter of the laws of 2016, amending the general business  
6 law relating to employment agencies, as proposed in legislative bills  
7 numbers S. 8102 and A. 10672, is amended to read as follows:

8 1. Upon the receipt of an application for a license, the commissioner  
9 shall cause the name and address of the applicant, the name under which  
10 the employment agency is to be conducted, and the street and number of  
11 the place where the agency is to be conducted, to be posted on the  
12 commissioner's website, as well as in a conspicuous place in his public  
13 office. Such agency shall be used exclusively as an employment agency  
14 and for no other purpose, except as hereinafter provided. The commis-  
15 sioner shall investigate or cause to be investigated the character and  
16 responsibility of the applicant and agency manager and shall examine or  
17 cause to be examined the premises designated in such application as the  
18 place in which it is proposed to conduct such agency.

19 The commissioner shall require all applicants for licenses and agency  
20 managers to be fingerprinted. Such fingerprints shall be submitted to  
21 the division of criminal justice services for a state criminal history  
22 record check, as defined in subdivision one of section three thousand  
23 thirty-five of the education law, and may be submitted to the federal  
24 bureau of investigation for a national criminal history record check.  
25 The criminal history information, if any, received by the [~~department of~~  
26 ~~labor~~] commissioner shall be considered in accordance with the  
27 provisions of article twenty-three-A of the correction law and subdivi-  
28 sions fifteen and sixteen of section two hundred ninety-six of the exec-  
29 utive law. A reasonable time before making a determination on the appli-  
30 cation pursuant to this subdivision, the [~~department~~] commissioner shall  
31 provide the applicant with a copy of the applicant's criminal history  
32 information, if any. Where such criminal history information is  
33 provided, the [~~department~~] commissioner shall also provide a copy of  
34 article twenty-three-A of the correction law, and inform such applicant  
35 of his or her right to seek correction of any incorrect information  
36 contained in such criminal history information pursuant to the regu-  
37 lations and procedures established by the division of criminal justice  
38 services.

39 § 3. Section 181 of the general business law, as amended by a chapter  
40 of the laws of 2016, amending the general business law relating to  
41 employment agencies, as proposed in legislative bills numbers S. 8102  
42 and A. 10672, is amended to read as follows:

43 § 181. Contracts, statements of terms and conditions, and receipts. It  
44 shall be the duty of every employment agency to give to each applicant  
45 for employment:

46 1. A true copy of every contract executed between such agency and such  
47 applicant, which shall have printed on it or attached to it a statement  
48 setting forth in a clear and concise manner the provisions of sections  
49 one hundred eighty-five, and one hundred eighty-six of this article.

50 2. (a) [~~Each contract~~] For class "C" theatrical employment: informa-  
51 tion as to the name and address of the person to whom the applicant is  
52 to apply for such employment, the kind of service to be performed, the  
53 anticipated rate of wages or compensation, the agency's fee for the  
54 applicant based on such anticipated wages or compensation, whether such  
55 employment is permanent or temporary, the name and address of the person  
56 authorizing the hiring of such applicant, and the cost of transportation

1 if the services are required outside of the city, town or village where  
2 such agency is located. If the job is a conditionally fee-paid job, the  
3 conditions under which the applicant will be required to pay a fee shall  
4 be clearly set forth in a separate agreement in ten-point type signed by  
5 the job applicant.

6 (b) for all other employment, including class "A" and "A-1" employ-  
7 ment, each contract shall include, but not be limited to, the following:  
8 information as to the name and address of the person to whom the appli-  
9 cant is to apply for such employment, the name, the address, the mailing  
10 address, and the telephone number of the employer; the address or  
11 addresses of employment, the kind of service to be performed; the antic-  
12 ipated rate of wages or compensation; the anticipated hours of work per  
13 day and number of days to be worked per week; the agency's fee for the  
14 applicant based on such anticipated wages or compensation; any provision  
15 to the employee, and costs associated with that provision including  
16 housing, health insurance, healthcare, sick leave, holidays and retire-  
17 ment benefits; whether such employment is permanent or temporary, the  
18 anticipated period of employment, the name and address of the person  
19 authorizing the hiring of such applicant; and the cost of transportation  
20 if the services are required outside of the city, town or village where  
21 such agency is located. If the job is a conditionally fee-paid job, the  
22 conditions under which the applicant will be required to pay a fee shall  
23 be clearly set forth in a separate agreement in ten-point type signed by  
24 the job applicant.

25 ~~[(b)]~~ 3. (a) This paragraph shall apply to all classes of employment  
26 except for class "C" theatrical employment. The employment agency shall  
27 provide to each applicant, a separate document accompanying each  
28 contract summarizing the terms and conditions of the contract [~~in~~  
29 ~~commonly understood terms~~]. This document shall be entitled "terms and  
30 conditions" and shall include the language that the document is not a  
31 contract and that such document is not legally binding. [~~The commission-~~  
32 ~~er shall promulgate rules and regulations determining what information~~  
33 ~~shall be included in the terms and conditions provided by an agency to~~  
34 ~~an applicant]~~ The terms and conditions shall be provided in plain and  
35 commonly understood terms and language which shall aid the job applicant  
36 in understanding the transaction and such document shall limit the use  
37 of technical terms whenever possible.

38 (b) The terms and conditions shall conform to any templates estab-  
39 lished by the commissioner and be made available to employment agencies  
40 in such manner as determined by the commissioner. In developing such  
41 templates, the commissioner shall afford the public an opportunity to  
42 submit comments on such templates.

43 (c) The commissioner may promulgate rules and regulations necessary to  
44 carry out the provisions of this section.

45 ~~[(c) When a job applicant identifies as his or her primary language a~~  
46 ~~language for which a template is not available from the commissioner,~~  
47 ~~the employment agency shall comply with this subdivision by providing~~  
48 ~~that employee an English-language statement.]~~

49 (d) An employment agency shall not be penalized for errors or omis-  
50 sions in the non-English portions of any [~~notice~~] templates provided by  
51 the commissioner.

52 ~~[3-]~~ 4. A receipt for any fee, deposit, consideration, or payment  
53 which such agency receives from such applicant, which shall have printed  
54 or written on it the name of the applicant, the name and address of the  
55 employment agency, the date and amount of such fee, deposit, consider-  
56 ation or payment or portion thereof for which the receipt is given, the

1 purpose for which it was paid, and the signature of the person receiving  
2 such payment. If the applicant for employment has been recruited from  
3 outside the state for domestic or household employment the receipt shall  
4 have printed on it, or attached to it, a copy of section one hundred  
5 eighty-four of this article. The receipt shall also include, immediate-  
6 ly above the place for signature of the person receiving payment, set  
7 off in a box and printed in bold capital letters, the following state-  
8 ment: "An employment agency may not charge you, the job applicant, a fee  
9 before referring you to a job that you accept. If you pay a fee before  
10 accepting a job or pay a fee that otherwise violates the law, you may  
11 demand a refund, which shall be repaid within seven days".

12 ~~[4-]~~ 5. The completed original or duplicate-original copy of each such  
13 contract, statement of terms and conditions, receipts, and any other  
14 documents given to the applicant shall be retained by every employment  
15 agency for three years following the date on which the contract is  
16 executed or the payment is made, and shall be made available for  
17 inspection by the commissioner or his duly authorized agent or inspec-  
18 tor, upon his request. Notwithstanding the other provisions of such  
19 contracts, the monetary consideration to be paid by the applicant shall  
20 not exceed the fee ceiling provided in subdivision eight of section one  
21 hundred eighty-five of this article.

22 § 4. Subdivisions 2, 4 and 5 of section 189 of the general business  
23 law, as amended by a chapter of the laws of 2016, amending the general  
24 business law relating to employment agencies, as proposed in legislative  
25 bills numbers S. 8102 and A. 10672, are amended to read as follows:

26 2. To effectuate the purposes of this article, article nineteen-B of  
27 the labor law and sections 37.01, 37.03 and 37.05 of the arts and  
28 cultural affairs law, the commissioner or any duly authorized agent or  
29 inspector designated by such commissioner, shall have authority to  
30 inspect the premises, registers, contract forms, completed contracts,  
31 statements of terms and conditions, receipt books, application forms,  
32 referral forms, reference forms, reference reports and financial records  
33 of fees charged and refunds made of each employment agency, and any  
34 other record that the employment agency is required to maintain pursuant  
35 to this article, which are essential to the operation of such agency,  
36 and of each applicant for an employment agency license, as frequently as  
37 necessary to ensure compliance with this article and such sections. In  
38 no event shall any employment agency be inspected less frequently than  
39 once every eighteen months. Inspections may consist of in-person visits  
40 to employment agencies or the review of records as described in this  
41 subdivision or both. The commissioner shall also have authority to  
42 subpoena records and witnesses or otherwise to conduct investigations of  
43 any employer or other person where he or she has reasonable grounds for  
44 believing that such employer or person is violating or has conspired or  
45 is conspiring with an employment agency to violate this article or such  
46 sections.

47 4. Complaints against any such licensed or unlicensed person may be  
48 made orally or in writing to the commissioner, or be sent in an affida-  
49 vit form without appearing in person, and may be made by recognized  
50 employment agencies, trade associations, or others. The commissioner may  
51 hold a hearing on a complaint with the powers provided by section one  
52 hundred seventy-four of this article. If a hearing is held, reasonable  
53 notice thereof, not less than five days, shall be given in writing to  
54 said person by serving upon the person either personally, by mail, or by  
55 leaving the same with the person in charge of his office, a concise  
56 statement of the facts constituting the complaint, and the hearing shall

1 commence before the commissioner with reasonable speed but in no event  
2 later than two weeks from the date of the filing of the complaint. The  
3 commissioner when investigating any matters pertaining to the granting,  
4 issuing, transferring, renewing, revoking, suspending or cancelling of  
5 any license is authorized in his discretion to take such testimony as  
6 may be necessary on which to base official action. When taking such  
7 testimony he may subpoena witnesses and also direct the production  
8 before him of necessary and material books and papers. A daily calendar  
9 of all hearings shall be kept by the commissioner and shall be posted in  
10 a conspicuous place in his public office for at least one day before the  
11 date of such hearings. The commissioner shall render his decision within  
12 thirty days from the time the matter is finally submitted to him. The  
13 commissioner shall keep a record of all such complaints and hearings.  
14 The office of new Americans shall, pursuant to section ninety-four-b of  
15 the executive law, receive complaints~~[, attempt to mediate such~~  
16 ~~complaints,~~] and where appropriate refer such complaints to the attorney  
17 general or other federal, state or local agency authorized by law to  
18 take action on such complaint.

19 5. Upon a finding that the licensed person or his agent, employee or  
20 anyone acting on his behalf is guilty of violating any provision of this  
21 article or is not a person of good character and responsibility, the  
22 commissioner may suspend or revoke the license of such licensed person.  
23 Any employment agency found to have violated any provision of this arti-  
24 cle shall be subject, for the first offense, to a civil penalty not to  
25 exceed one thousand dollars per violation, and, for each subsequent  
26 offense within six years of such previous offense, to a civil penalty,  
27 not to exceed five thousand dollars per violation. ~~[When]~~ Upon notice  
28 of violation of this article or when it is determined that there has  
29 been a violation of this article by an employment agency, the commis-  
30 sioner ~~[shall]~~ may provide the employment agency with a specific time  
31 period for such employment agency to cure or correct such violation or  
32 take other ameliorative action as directed by the commissioner, the  
33 successful completion of which shall prevent the imposition of penalties  
34 on the employment agency for such violation. Whenever such commissioner  
35 shall suspend or revoke the license of any employment agency, or shall  
36 levy a fine against any agency, said determination shall be subject to  
37 judicial review in proceedings brought pursuant to article seventy-eight  
38 of the civil practice law and rules. Whenever an employment agency's  
39 license is revoked, another license or agency manager permit shall not  
40 be issued within three years from the date of such revocation to said  
41 licensed person or his agency manager or to any person with whom the  
42 licensee has been associated in the business of furnishing employment or  
43 engagements. Deputy commissioners, or other officials designated to act  
44 on behalf of the commissioner, may conduct hearings and act upon appli-  
45 cations for licenses, and revoke or suspend such licenses, or levy fines  
46 against an employment agency.

47 § 5. Section 11 of a chapter of the laws of 2016, amending the general  
48 business law relating to employment agencies, as proposed in legislative  
49 bills numbers S. 8102 and A. 10672, is amended to read as follows:

50 § 11. This act shall take effect immediately; provided, however, that  
51 the amendments to paragraph (b) of subdivision 2 of section 181 of the  
52 general business law made by section four of this act shall take effect  
53 on the forty-fifth day after it shall have become a law.

54 § 6. This act shall take effect immediately; provided however that  
55 sections one, two, three, and four of this act shall take effect on the  
56 same date and in the same manner as a chapter of the laws of 2016,

1 amending the general business law relating to employment agencies, as  
2 proposed in legislative bills numbers S. 8102 and A. 10672, takes  
3 effect.