S T A T E O F N E W Y O R K

5866--A

2013-2014 Regular Sessions

I N S E N A T E

June 18, 2013

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to fees charged by employment agencies for class "A" or "A-1" employment

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 1 of section 185 of the general business law, as amended by chapter 460 of the laws of 2012, is amended and a new subdivision 1-a is added to read as follows:

1. Circumstances permitting fee. An employment agency shall not charge or accept a fee or other consideration unless in accordance with the terms of a written contract with a job applicant[, except:

(a) for class "A" and "A-1" employment, and except] AND after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer[; and

(b)], EXCEPT for class "C" employment: [(i)] (A) after an agency has been responsible for referring an artist to an employer or such employer to an artist and where as a result thereof such artist has been employed by such employer; or [(ii)] (B) after an agency represents an artist in the negotiation or renegotiation of an original or pre-existing employment contract and where as a result thereof the artist enters into a negotiated or renegotiated employment contract. For class "C" employment pursuant to this paragraph, an employment agency shall provide an artist with a statement setting forth in a clear and concise manner the provisions of this section and section one hundred eighty-six of this article. The maximum fees provided for herein for all types of placements or employment may be charged to the job applicant and a similar fee may be charged to the employer provided, however, that with regard

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

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to placements in class "B" employment, a fee of up to one and one-half times the fee charged to the job applicant may be charged to the employer. By agreement with an employment agency, the employer may voluntarily assume payment of the job applicant's fee. The fees charged to employers by any licensed person conducting an employment agency for rendering services in connection with, or for providing employment in classes "A", "A-1" and "B", as hereinafter defined in subdivision four of this section where the applicant is not charged a fee shall be determined by agreement between the employer and the employment agency. No fee shall be charged or accepted for the registration of applicants for employees or employment.

1-A. FEE REFUND. AN EMPLOYMENT AGENCY WHO HAS CHARGED OR ACCEPTED A FEE OR OTHER CONSIDERATION FOR CLASSES "A" AND "A-1" EMPLOYMENT WITHOUT A CONTRACT PRIOR TO OCTOBER FIRST, TWO THOUSAND THIRTEEN SHALL REFUND THE FULL AMOUNT TO THE JOB APPLICANT BY NOVEMBER FIRST, TWO THOUSAND THIRTEEN IF: (I) SUCH FEE OR CONSIDERATION DID NOT LEAD TO THE JOB APPLICANT OBTAINING EMPLOYMENT THROUGH THE EMPLOYMENT AGENCY; OR (II) THE FEE OR CONSIDERATION WAS NOT APPLIED TO THE JOB APPLICANT'S ACCOUNT FOR SERVICES RENDERED BY THE EMPLOYMENT AGENCY.

S 2. Subdivision 3 of section 185 of the general business law, as amended by chapter 1010 of the laws of 1960, is amended to read as follows:

3. Deposits, advance fees. Notwithstanding any other provisions of this section, an employment agency [may] SHALL not require OR ACCEPT a deposit or advance fee from any applicant [except an applicant for class "A" or class "A1" employment, and only to the extent of the maximum fees hereinafter provided. Such deposit or advance fee shall be offset against any fee charged or accepted when such employment is obtained. Any excess above the lawful fee shall be returned without demand therefor, immediately after the employment agency has been notified that such employment has been obtained; and all of such deposit or advance fee shall be returned immediately upon demand therefor, if at the time of the demand such employment has not been obtained]. ANY DEPOSIT OR ADVANCE FEE COLLECTED BY AN EMPLOYMENT AGENCY PRIOR TO OCTOBER FIRST, TWO THOUSAND THIRTEEN MUST BE REFUNDED TO THE APPLICANT BY NOVEMBER FIRST, TWO THOUSAND THIRTEEN IF: (I) SUCH DEPOSIT OR ADVANCE FEE DID NOT LEAD TO THE JOB APPLICANT OBTAINING EMPLOYMENT THROUGH THE EMPLOYMENT AGENCY OR (II) THE DEPOSIT OR ADVANCE FEE WAS NOT APPLIED TO THE JOB APPLICANT'S ACCOUNT FOR SERVICES RENDERED BY THE EMPLOYMENT AGENCY.

S 3. This act shall take effect October 1, 2013.