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

3415

2015-2016 Regular Sessions

I N S E N A T E

February 9, 2015

Introduced by Sens. KLEIN, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to employment agencies

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

Section 1. Section 171 of the general business law is amended by adding a new subdivision 12 to read as follows:

12. "BONA FIDE ORDER" MEANS A WRITTEN ORDER FROM AN EMPLOYER DIRECTED TO AN EMPLOYMENT AGENCY STATING THAT THE EMPLOYER REQUESTS THAT THE EMPLOYMENT AGENCY REFER ONE OR MORE JOB APPLICANTS FOR A SPECIFIC POSITION OR POSITIONS WITHIN A SPECIFIED AND LIMITED APPLICATION PERIOD. AN EMPLOYMENT AGENCY MUST RENEW A BONA FIDE ORDER AFTER FORTY-FIVE DAYS IF IT INTENDS TO REFER AN APPLICANT FOR THE POSITION DESCRIBED IN SUCH BONA FIDE ORDER, AND THE EMPLOYMENT AGENCY MUST SPECIFY ON THE BONA FIDE ORDER THE NAME OF THE REPRESENTATIVE OF THE PROSPECTIVE EMPLOYER WHO AUTHORIZED THE RENEWAL AND THE DATE ON WHICH THE RENEWAL WAS AUTHORIZED. THE BONA FIDE ORDER SHALL ALSO INCLUDE A WRITTEN STATEMENT SETTING FORTH THE TERMS AND CONDITIONS OF EMPLOYMENT FOR THE POSITION DESCRIBED IN THE ORDER; SUCH WRITTEN STATEMENT SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION:

A. THE NAME OF THE EMPLOYER, ANY "DOING BUSINESS AS" NAMES USED BY THE EMPLOYER, THE PHYSICAL ADDRESS OF THE EMPLOYER'S MAIN OFFICE OR PRINCIPAL PLACE OF BUSINESS, AND A MAILING ADDRESS IF DIFFERENT, THE TELEPHONE NUMBER OF THE EMPLOYER, PLUS SUCH OTHER INFORMATION AS THE COMMISSIONER DEEMS MATERIAL AND NECESSARY;

B. THE PLACE OR PLACES OF EMPLOYMENT;

C. THE HOURS OF WORK PER DAY AND NUMBER OF DAYS PER WEEK TO BE WORKED;

D. THE RATE OR RATES OF PAY AND BASIS THEREOF, WHETHER PAID BY THE HOUR, SHIFT, DAY, WEEK, SALARY, PIECE, COMMISSION, OR OTHER, ALLOWANCES,

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

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IF ANY, CLAIMED AS PART OF THE MINIMUM WAGE, INCLUDING TIP, MEAL, OR LODGING ALLOWANCES;

E. THE CIRCUMSTANCES UNDER WHICH THE EMPLOYEE WILL BE PAID A PREMIUM FOR WORKING IN EXCESS OF AN ESTABLISHED NUMBER OF HOURS PER DAY, WEEK, OR MONTH, OR FOR WORKING ON DESIGNATED NIGHTS, WEEKENDS, OR HOLIDAYS;

F. THE ANTICIPATED PERIOD OF EMPLOYMENT;

G. ANY PROVISION TO THE EMPLOYEE, AND HOW LONG THE PROVISION WILL BE PROVIDED BY THE EMPLOYER, AND ANY COSTS TO THE EMPLOYEE ASSOCIATED WITH THE PROVISION, INCLUDING BUT NOT LIMITED TO, TRANSPORTATION TO AND FROM WORK, HOUSING, HEALTH INSURANCE OR HEALTH CARE, PAID SICK OR ANNUAL LEAVE AND HOLIDAY OR HOLIDAYS, PENSION OR RETIREMENT BENEFITS, PERSONAL PROTECTIVE EQUIPMENT REQUIRED FOR WORK, WORKERS' COMPENSATION AND INFORMATION ABOUT THE INSURANCE POLICY AND RULES REGARDING REPORTING OF ACCIDENTS OR INJURIES, AND UNEMPLOYMENT COMPENSATION; AND

H. THE NATURE OF THE WORK TO BE PERFORMED BY THE EMPLOYEE.

S 2. Paragraph b of subdivision 2 of section 173 of the general business law, as added by chapter 632 of the laws of 1975, is amended to read as follows:

b. The application for a license shall be accompanied by samples or accurate facsimiles of each and every form [which the applicant for a license will require applicants for employment to execute], CONTRACT, STATEMENT OF TERMS AND CONDITIONS, AND RECEIPT, AS REQUIRED UNDER SECTION ONE HUNDRED EIGHTY-ONE OF THIS ARTICLE, and such forms, CONTRACTS, STATEMENTS OF TERMS AND CONDITIONS, AND RECEIPTS must be approved by the commissioner before a license may be issued. The commissioner shall approve any such forms which fairly and clearly represent contractual terms and conditions between the proposed employment agency and applicants for employment, such as are permitted by this article.

S 3. Subdivisions 1 and 2 of section 174 of the general business law, subdivision 1 as amended by chapter 164 of the laws of 2003, subdivision 2 as amended by chapter 632 of the laws of 1975, are amended to read as follows:

1. Upon the receipt of an application for a license, the commissioner shall cause the name and address of the applicant, the name under which the employment agency is to be conducted, and the street and number of the place where the agency is to be conducted, to be posted ON THE COMMISSIONER'S WEBSITE, AS WELL AS in a conspicuous place in his public office. Such agency shall be used exclusively as an employment agency and for no other purpose, except as hereinafter provided. The commissioner shall investigate or cause to be investigated the character and responsibility of the applicant and agency manager and shall examine or cause to be examined the premises designated in such application as the place in which it is proposed to conduct such agency.

The commissioner shall require all applicants for licenses and agency managers to be fingerprinted. Such fingerprints shall be submitted to the division of criminal justice services for a state criminal history record check, as defined in subdivision one of section three thousand thirty-five of the education law, and may be submitted to the federal bureau of investigation for a national criminal history record check. THE CRIMINAL HISTORY INFORMATION, IF ANY, RECEIVED BY THE DEPARTMENT OF LABOR SHALL BE CONSIDERED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW AND SUBDIVISIONS FIFTEEN AND SIXTEEN OF SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW. A REASONABLE TIME BEFORE MAKING A DETERMINATION ON THE APPLICATION PURSUANT TO THIS SUBDIVISION, THE DEPARTMENT SHALL PROVIDE THE APPLICANT CRIMINAL HISTORY INFORMATION, IF ANY. WHERE SUCH CRIMINAL HISTORY INFOR-

MATION IS PROVIDED, THE DEPARTMENT SHALL ALSO PROVIDE A COPY OF ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW, AND INFORM SUCH APPLICANT OF HIS OR HER RIGHT TO SEEK CORRECTION OF ANY INCORRECT INFORMATION CONTAINED IN SUCH CRIMINAL HISTORY INFORMATION PURSUANT TO THE REGULATIONS AND PROCEDURES ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

2. Any person may file, within one week after such application is so posted [in the said office], a written protest against the issuance of such license. Such protest shall be in writing and signed by the person filing the same or his authorized agent or attorney, and shall state reasons why the said license should not be granted. Upon the filing of such protest the commissioner shall appoint a time and place for the hearing of such application, and shall give at least five days' notice of such time and place to the applicant and the person filing such protest. The commissioner may administer oaths, subpoena witnesses and take testimony in respect to the matters contained in such application and protests or complaints of any character for violation of this article, and may receive evidence in the form of affidavits pertaining to such matters. If it shall appear upon such hearing or from the inspection, examination or investigation made by the commissioner that the applicant or agency manager is not a person of good character or responsibility; or that he or the agency manager has not had at least two years experience as a placement employee, vocational counsellor or in related activities, or other satisfactory business experience which similarly tend to establish the competence of such individual to direct and operate the placement activities of the agency; or that the place where such agency is to be conducted is not a suitable place therefor; or that the applicant has not complied with the provisions of this article; the said application shall be denied and a license shall not be granted. Each application should be granted or refused within thirty days from the date of its filing.

S 4. Section 179 of the general business law, as amended by chapter 632 of the laws of 1975, is amended to read as follows:

S 179. Registers and other records to be kept. It shall be the duty of every licensed person to keep a register, approved by the commissioner, in which shall be entered, in the English language, the date of the application for employment, the date the applicant started work and the name and address of every applicant from whom a fee or deposit is charged, the amount of the fee or deposit and the service for which it is received or charged. Such licensed person shall also enter in the same or in a separate register, approved by the commissioner, in the English language, the name and address of every employer from whom a fee is received or charged or to whom the licensed person refers an applicant who has paid or is charged a fee, the date of such employer's request or assent that applicants be furnished, the kind of position for which applicants are requested, the names of the applicants sent from whom a fee or deposit is received or charged with the designation of the one employed, the amount of the fee or deposit charged, and the rate of salary or wages agreed upon. It shall also be the duty of every licensed person to keep complete and accurate written records in the English language of all receipts and income received or derived directly from the operation of his employment agency, and to keep records concerning [job] BONA FIDE orders. No such licensed person, his agent or employees, shall make any false entry in such records. It shall be the duty of every licensed person to communicate orally or in writing with at least one of the persons mentioned as references for every applicant for work in private families, or employed in a fiduciary capacity, and the result

of such investigation shall be kept on file in such agency for a period of at least three years. Every register and all records, INCLUDING BONA FIDE ORDERS, kept pursuant to the requirements of this article shall be retained on the premises of the agency concerned for three years following the date on which the last entry thereon was made [except a job order which shall be retained for one year following the date on which it was received].

S 5. Section 181 of the general business law, as added by chapter 893 of the laws of 1958, subdivision 1 as added and subdivision 2 as amended by chapter 632 of the laws of 1975, subdivision 3 as separately amended by chapters 1010 and 1083 of the laws of 1960, and subdivision 4 as amended by chapter 479 of the laws of 1963, is amended to read as follows:

S 181. Contracts, STATEMENTS OF TERMS AND CONDITIONS, AND receipts. It shall be the duty of every employment agency to give to each applicant for employment:

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

2. [Information as to the name and address of the person to whom the applicant is to apply for such employment, the kind of service to be performed, the anticipated rate of wages or compensation, the agency's fee for the applicant based on such anticipated wages or compensation, whether such employment is permanent or temporary, the name and address of the person authorizing the hiring of such applicant, and the cost of transportation if the services are required outside of the city, town or village where such agency is located. If the job is a conditionally fee-paid job, the conditions under which the applicant will be required to pay a fee shall be clearly set forth in a separate agreement in ten-point type signed by the job applicant.] (A) AN EMPLOYMENT AGENCY SHALL ISSUE A WRITTEN STATEMENT OF TERMS AND CONDITIONS TO EACH JOB APPLICANT ON EACH OCCASION THAT THE AGENCY REFERS THE APPLICANT TO A POTENTIAL EMPLOYER. THE WRITTEN STATEMENT OF TERMS AND CONDITIONS SHALL BE IN ENGLISH AND IN THE LANGUAGE IDENTIFIED BY THE APPLICANT AS THE PRIMARY LANGUAGE OF SUCH APPLICANT. EVERY EMPLOYMENT AGENCY SHALL KEEP ON FILE IN ITS PRINCIPAL PLACE OF BUSINESS FOR A PERIOD OF THREE YEARS A COPY OF EACH WRITTEN STATEMENT OF TERMS AND CONDITIONS ISSUED TO EACH APPLICANT THAT IS SIGNED AND DATED BY THE APPLICANT. THE STATEMENT OF TERMS AND CONDITIONS SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION: (I) THE NAME OF THE EMPLOYER, ANY "DOING BUSINESS AS" NAMES USED BY THE EMPLOYER, THE PHYSICAL ADDRESS OF THE EMPLOYER'S MAIN OFFICE OR PRINCIPAL PLACE OF BUSINESS, AND A MAILING ADDRESS IF DIFFERENT, THE TELEPHONE NUMBER OF THE EMPLOYER, PLUS SUCH OTHER INFORMATION AS THE COMMISSIONER DEEMS MATERIAL AND NECESSARY; (II) THE PLACE OR PLACES OF EMPLOYMENT; (III) THE HOURS OF WORK PER DAY AND NUMBER OF DAYS PER WEEK TO BE WORKED; (IV) THE RATE OR RATES OF PAY AND BASIS THEREOF, WHETHER PAID BY THE HOUR, SHIFT, DAY, WEEK, SALARY, PIECE, COMMISSION, OR OTHER, ALLOWANCES, IF ANY, CLAIMED AS PART OF THE MINIMUM WAGE, INCLUDING TIP, MEAL, OR LODGING ALLOWANCES; (V) THE CIRCUMSTANCES UNDER WHICH THE EMPLOYEE WILL BE PAID A PREMIUM FOR WORKING IN EXCESS OF AN ESTABLISHED NUMBER OF HOURS PER DAY, WEEK, OR MONTH, OR FOR WORKING ON DESIGNATED NIGHTS, WEEKENDS, OR HOLIDAYS; (VI) THE ANTICIPATED PERIOD OF EMPLOYMENT; (VII) ANY PROVISION TO THE EMPLOYEE, AND HOW LONG THE PROVISION WILL BE PROVIDED BY THE EMPLOYER, AND ANY COSTS TO THE EMPLOYEE ASSOCIATED WITH THE PROVISION, INCLUDING BUT NOT LIMITED TO, TRANSPORTATION TO AND FROM

WORK, HOUSING, HEALTH INSURANCE OR HEALTH CARE, PAID SICK OR ANNUAL LEAVE AND HOLIDAY OR HOLIDAYS, PENSION OR RETIREMENT BENEFITS, PERSONAL PROTECTIVE EQUIPMENT REQUIRED FOR WORK, WORKERS' COMPENSATION AND INFORMATION ABOUT THE INSURANCE POLICY AND RULES REGARDING REPORTING OF ACCIDENTS OR INJURIES, AND UNEMPLOYMENT COMPENSATION; AND (VIII) THE NATURE OF THE WORK TO BE PERFORMED BY THE EMPLOYEE.

(B) THE COMMISSIONER SHALL PREPARE TEMPLATES THAT COMPLY WITH THE REQUIREMENTS OF PARAGRAPH (A) OF THIS SUBDIVISION. EACH SUCH TEMPLATE SHALL BE DUAL-LANGUAGE, INCLUDING ENGLISH AND ONE ADDITIONAL LANGUAGE. THE COMMISSIONER SHALL DETERMINE, IN HIS OR HER DISCRETION, WHICH LANGUAGES TO PROVIDE IN ADDITION TO ENGLISH, BASED ON THE SIZE OF THE NEW YORK STATE POPULATION THAT SPEAKS EACH LANGUAGE AND ANY OTHER FACTOR THAT THE COMMISSIONER SHALL DEEM RELEVANT. ALL SUCH TEMPLATES SHALL BE MADE AVAILABLE TO EMPLOYMENT AGENCIES IN SUCH MANNER AS DETERMINED BY THE COMMISSIONER.

(C) WHEN A JOB APPLICANT IDENTIFIES AS HIS OR HER PRIMARY LANGUAGE A LANGUAGE FOR WHICH A TEMPLATE IS NOT AVAILABLE FROM THE COMMISSIONER, THE EMPLOYMENT AGENCY SHALL COMPLY WITH THIS SUBDIVISION BY PROVIDING THAT EMPLOYEE AN ENGLISH-LANGUAGE STATEMENT.

(D) AN EMPLOYMENT AGENCY SHALL NOT BE PENALIZED FOR ERRORS OR OMISSIONS IN THE NON-ENGLISH PORTIONS OF ANY NOTICE PROVIDED BY THE COMMISSIONER.

3. [A receipt for any fee, deposit, consideration, or payment which such agency receives from such applicant, which shall have printed or written on it the name of the applicant, the name and address of the employment agency, the date and amount of such fee, deposit, consideration or payment or portion thereof for which the receipt is given, the purpose for which it was paid, and the signature of the person receiving such payment. If the applicant for employment has been recruited from outside the state for domestic or household employment the receipt shall have printed on it, or attached to it, a copy of section one hundred eighty-four of this article.] EVERY EMPLOYMENT AGENCY SHALL KEEP ON FILE IN ITS PRINCIPAL PLACE OF BUSINESS FOR A PERIOD OF THREE YEARS A STATEMENT, SIGNED BY THE EMPLOYER OF EVERY APPLICANT WHOM THE EMPLOYMENT AGENCY HAS PLACED, INDICATING THAT THE EMPLOYER HAS READ AND UNDERSTOOD THE STATEMENT OF TERMS AND CONDITIONS REQUIRED BY SUBDIVISION TWO OF THIS SECTION AND THAT THE EMPLOYER HAS RECEIVED A COPY OF THAT STATEMENT.

4. [The original or duplicate-original copy of each such contract and receipt shall be retained by every employment agency for three years following the date on which the contract is executed or the payment is made, and shall be made available for inspection by the commissioner or his duly authorized agent or inspector, upon his request. Notwithstanding the other provisions of such contracts, the monetary consideration to be paid by the applicant shall not exceed the fee ceiling provided in subdivision eight of section one hundred eighty-five.] A RECEIPT FOR ANY FEE, CONSIDERATION, OR PAYMENT WHICH AN AGENCY RECEIVES FROM AN APPLICANT. THE RECEIPT SHALL HAVE PRINTED OR WRITTEN ON IT THE NAME OF THE APPLICANT, THE NAME AND ADDRESS OF THE EMPLOYMENT AGENCY, THE DATE AND AMOUNT OF SUCH FEE, CONSIDERATION OR PAYMENT OR PORTION THEREOF FOR WHICH THE RECEIPT IS GIVEN, THE PURPOSE FOR WHICH IT WAS PAID, AND THE SIGNATURE OF THE PERSON RECEIVING SUCH PAYMENT. THE RECEIPT SHALL ALSO INCLUDE IMMEDIATELY ABOVE THE PLACE FOR SIGNATURE OF THE PERSON RECEIVING PAYMENT, SET OFF IN A BOX AND PRINTED IN BOLD AND IN CAPS, THE FOLLOWING STATEMENT: "AN EMPLOYMENT AGENCY MAY NOT CHARGE YOU, THE JOB APPLICANT, A FEE BEFORE REFERRING YOU TO A JOB THAT YOU ACCEPT. IF YOU

PAY A FEE BEFORE ACCEPTING A JOB OR PAY A FEE THAT OTHERWISE VIOLATES THE LAW, YOU MAY DEMAND A REFUND, WHICH SHALL BE REPAID WITHIN SEVEN (7) DAYS." THE TEXT CONTAINED IN THIS BOX SHALL ALSO BE IN ENGLISH AND IN THE LANGUAGE IDENTIFIED BY EACH APPLICANT AS THE PRIMARY LANGUAGE OF SUCH APPLICANT.

5. THE ORIGINAL OR DUPLICATE-ORIGINAL COPY OF EACH WRITTEN CONTRACT, EACH STATEMENT OF TERMS AND CONDITIONS REQUIRED BY SUBDIVISION TWO OF THIS SECTION, AND EACH RECEIPT REQUIRED BY SUBDIVISION FOUR OF THIS SECTION SHALL BE RETAINED BY EVERY EMPLOYMENT AGENCY FOR THREE YEARS FOLLOWING THE DATE ON WHICH THE CONTRACT IS EXECUTED. THE RECORDS REQUIRED UNDER THIS SUBDIVISION SHALL BE MADE AVAILABLE FOR INSPECTION BY THE COMMISSIONER OR HIS OR HER DULY AUTHORIZED AGENT OR INSPECTOR, UPON SUCH REQUEST.

S 6. Subdivisions 1 and 3 of section 185 of the general business law, subdivision 1 as amended by chapter 460 of the laws of 2012 and subdivision 3 as amended by chapter 1010 of the laws of 1960, are 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 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 FIFTEEN, SHALL REFUND THE FULL AMOUNT TO THE JOB APPLICANT BY NOVEMBER FIRST, TWO THOUSAND SIXTEEN, IF: (A) SUCH FEE OR CONSIDERATION DID NOT LEAD TO THE JOB APPLICANT OBTAINING EMPLOYMENT THROUGH THE EMPLOYMENT AGENCY; OR (B) THE

FEE OR CONSIDERATION WAS NOT APPLIED TO THE JOB APPLICANT'S ACCOUNT FOR SERVICES RENDERED BY THE EMPLOYMENT AGENCY.

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 FIFTEEN, MUST BE REFUNDED TO THE APPLICANT BY NOVEMBER FIRST, TWO THOUSAND SIXTEEN, IF: (A) SUCH DEPOSIT OR ADVANCE FEE DID NOT LEAD TO THE JOB APPLICANT OBTAINING EMPLOYMENT THROUGH THE EMPLOYMENT AGENCY OR (B) THE DEPOSIT OR ADVANCE FEE WAS NOT APPLIED TO THE JOB APPLICANT'S ACCOUNT FOR SERVICES RENDERED BY THE EMPLOYMENT AGENCY.

S 7. Subdivision 2 of section 186 of the general business law, as amended by chapter 1010 of the laws of 1960, is amended to read as follows:

2. Failure to report: If a job applicant accepts employment and thereafter fails to report for work, the gross fee charged to such applicant shall not exceed twenty-five per cent of the maximum fee allowed by section one hundred eighty-five of this article[, provided however, if the applicant remains with his same employer, the fee shall not exceed fifty per cent]. If a job applicant accepts employment and fails to report for work, no fee shall be charged to the employer.

S 8. Subdivision 3 of section 187 of the general business law, as added by chapter 893 of the laws of 1958, is amended to read as follows:

(3) Advertise in newspapers or otherwise, or use letterheads or receipts or other written or printed matter, unless such advertising or other matter contains the name and address of the employment agency [and] the word "agency", AND THE AGENCY'S LICENSE NUMBER.

S 9. Section 189 of the general business law, as amended by chapter 479 of the laws of 1963, subdivisions 1 and 2 as amended by chapter 721 of the laws of 2004, subdivisions 4 and 5 as amended by chapter 632 of the laws of 1975, is amended to read as follows:

S 189. Enforcement of provisions of this article. 1. This article, article nineteen-B of the labor law and sections 37.01, 37.03 and 37.05 of the arts and cultural affairs law shall be enforced by the commissioner of labor, except that in the city of New York this article and such sections shall be enforced by the commissioner of consumer affairs of such city. IN ADDITION TO THE POWERS OF THE COMMISSIONER, THE ATTORNEY GENERAL SHALL HAVE THE POWER TO ENFORCE THIS ARTICLE; SUCH POWERS INCLUDE, BUT ARE NOT LIMITED TO, ACTIONS TO RESTRAIN OR ENJOIN SUCH VIOLATION. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT THE RIGHTS OR REMEDIES WHICH ARE OTHERWISE AVAILABLE TO A PERSON UNDER ANY OTHER LAW.

2. To effectuate the purposes of this article, article nineteen-B of the labor law and sections 37.01, 37.03 and 37.05 of the arts and cultural affairs law, the commissioner or any duly authorized agent or inspector designated by such commissioner, shall have authority to inspect [the premises, registers, contract forms, receipt books, application forms, referral forms, reference forms, reference reports and financial records of fees charged and refunds made of each employment

agency, which are essential to the operation of such agency, and of each applicant for an employment agency license, as frequently as necessary to ensure compliance with this article and such sections; but in] EMPLOYMENT AGENCIES AND APPLICANTS FOR AN EMPLOYMENT AGENCY LICENSE AS FREQUENTLY AS NECESSARY TO ENSURE COMPLIANCE WITH THIS ARTICLE. THE FOLLOWING SHALL BE SUBJECT TO INSPECTION: THE PREMISES; REGISTERS; CONTRACTS SIGNED BY JOB APPLICANTS; STATEMENTS OF TERMS AND CONDITIONS; RECEIPTS; APPLICATION FORMS; REFERRAL FORMS; BONA FIDE ORDERS FROM PROSPECTIVE EMPLOYERS; WRITTEN NOTIFICATIONS FROM EMPLOYERS REQUIRED BY SECTION ONE HUNDRED EIGHTY-SEVEN OF THIS ARTICLE; REFERENCE FORMS; REFERENCE REPORTS; RECORDS OF FEES CHARGED; RECORDS OF REFUNDS MADE; AND ANY OTHER RECORD THAT AN EMPLOYMENT AGENCY MUST MAINTAIN PURSUANT TO THIS ARTICLE. IN no event shall any employment agency be inspected less frequently than once every eighteen months. INSPECTIONS MAY CONSIST OF IN-PERSON VISITS TO EMPLOYMENT AGENCIES. The commissioner shall also have authority to subpoena records and witnesses or otherwise to conduct investigations of any employer or other person where he or she has reasonable grounds for believing that such employer or person is violating or has conspired or is conspiring with an employment agency to violate this article or such sections.

3. To effectuate the purposes of this article, the commissioner may make reasonable administrative rules within the standards set in this article. Before such rules shall be issued, the commissioner shall conduct a public hearing, giving due notice thereof to all interested parties. No rule shall become effective until fifteen days after it has been filed in the office of the department of state, if it is a rule of the industrial commissioner, or in the office of the clerk of the city of New York, if it is a rule of the commissioner of licenses of such city, and copies thereof shall be furnished to all employment agencies affected at least fifteen days prior to the effective date of such rule.

4. Complaints against any such licensed OR UNLICENSED person [shall] MAY be made orally or in writing to the commissioner, or be sent in an affidavit form without appearing in person, and may be made by recognized employment agencies, trade associations, or others. The commissioner may hold a hearing on a complaint with the powers provided by section one hundred seventy-four of this article. If a hearing is held, reasonable notice thereof, not less than five days, shall be given in writing to said [licensed] person by serving upon the [licensed] person either personally, by mail, or by leaving the same with the person in charge of his office, a concise statement of the facts constituting the complaint, and the hearing shall commence before the commissioner with reasonable speed but in no event later than two weeks from the date of the filing of the complaint. The commissioner when investigating any matters pertaining to the granting, issuing, transferring, renewing, revoking, suspending or cancelling of any license is authorized in his discretion to take such testimony as may be necessary on which to base official action. When taking such testimony he may subpoena witnesses and also direct the production before him of necessary and material books and papers. A daily calendar of all hearings shall be kept by the commissioner and shall be posted in a conspicuous place in his public office for at least one day before the date of such hearings. The commissioner shall render his decision within thirty days from the time the matter is finally submitted to him. The commissioner shall keep a record of all such complaints and hearings. IN ADDITION TO THE POWERS OF THE COMMISSIONER, THE ATTORNEY GENERAL MAY BRING AN ACTION AGAINST ANYONE WHO IS ALLEGED TO HAVE VIOLATED THIS ARTICLE.

5. [Following such hearing if it has been shown] UPON A FINDING that the licensed person or his agent, employee or anyone acting on his behalf is guilty of violating any provision of this article or is not a person of good character and responsibility, the commissioner may suspend or revoke the license of such licensed person [and/or levy a fine against such licensed person for each violation not to exceed five hundred dollars]. ANY EMPLOYMENT AGENCY FOUND TO HAVE VIOLATED ANY PROVISION OF THIS ARTICLE SHALL BE SUBJECT, FOR THE FIRST OFFENSE, TO A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS PER VIOLATION, AND, FOR EACH SUBSEQUENT OFFENSE WITHIN SIX YEARS OF SUCH PREVIOUS OFFENSE, TO A CIVIL PENALTY, NOT TO EXCEED FIVE THOUSAND DOLLARS PER VIOLATION. IF THE PERSON SUBJECT TO THIS ARTICLE FAILS TO PAY THE DAMAGES, FINES, ATTORNEY'S FEES, COSTS, OR PENALTIES AWARDED, THE AMOUNT AWARDED MAY BE SATISFIED OUT OF THE BOND AMOUNT REQUIRED BY THIS ARTICLE. Whenever such commissioner shall suspend or revoke the license of any employment agency, or shall levy a fine against [such] ANY agency, said determination shall be subject to judicial review in proceedings brought pursuant to article seventy-eight of the civil practice law and rules. Whenever [such] AN EMPLOYMENT AGENCY'S license is revoked, another license or agency manager permit shall not be issued within three years from the date of such revocation to said licensed person or his agency manager or to any person with whom the licensee has been associated in the business of furnishing employment or engagements. Deputy commissioners, or other officials designated to act on behalf of the commissioner, may conduct hearings and act upon applications for licenses, and revoke or suspend such licenses, or levy fines AGAINST AN EMPLOYMENT AGENCY.

6. IF ANY PERSON USES ANY UNTRUE OR MISLEADING STATEMENT, INFORMATION, OR ADVERTISEMENT TO SELL ITS EMPLOYMENT AGENCY SERVICES OR FAILS TO COMPLY WITH THE APPLICABLE PROVISIONS OF THIS ARTICLE, OR THE CONTRACT DOES NOT COMPLY WITH THE APPLICABLE PROVISIONS OF THIS ARTICLE, THEN THE CONTRACT SHALL BE VOID AND UNENFORCEABLE AS CONTRARY TO PUBLIC POLICY.

7. ANY PERSON AGGRIEVED BY A VIOLATION OF THIS ARTICLE MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION AGAINST ANY EMPLOYMENT AGENCY OR PERSONS ALLEGED TO HAVE VIOLATED THE PROVISIONS OF THIS ARTICLE. THE COURT SHALL HAVE JURISDICTION TO RESTRAIN VIOLATIONS OF THIS SECTION AND TO ORDER ALL APPROPRIATE RELIEF, INCLUDING ENJOINING THE CONDUCT OF ANY PERSON OR EMPLOYMENT AGENCY; ORDERING PAYMENT OF DAMAGES, COSTS AND REASONABLE ATTORNEYS' FEES TO THE AGGRIEVED INDIVIDUAL BY THE PERSON OR ENTITY FOUND TO BE IN VIOLATION OF THIS ARTICLE.

8. THE REMEDIES PROVIDED IN THIS ARTICLE ARE NOT EXCLUSIVE AND SHALL BE IN ADDITION TO ANY OTHER REMEDIES OR PROCEDURES PROVIDED IN ANY OTHER LAW.

9. IF ANY PROVISIONS OF THIS ARTICLE OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCES IS HELD UNCONSTITUTIONAL, THE REMAINDER OF THE ARTICLE AND THE APPLICATION OF THAT PROVISION TO OTHER PERSONS AND CIRCUMSTANCES SHALL NOT BE AFFECTED THEREBY.

10. IF AN EMPLOYMENT AGENCY FAILS TO MAINTAIN RECORDS AS REQUIRED UNDER THIS ARTICLE, THE CREDIBLE TESTIMONY OF AN APPLICANT SHALL FORM THE PROPER BASIS FOR THE CALCULATION OF UNPAID WAGES AND/OR UNLAWFUL FEES.

S 10. Section 190 of the general business law, as amended by chapter 632 of the laws of 1975, is amended to read as follows:

S 190. Penalties for violations. Any person who violates and the officers of a corporation and stockholders holding ten percent or more of the stock of a corporation which is not publicly traded, who knowingly permit the corporation to violate sections one hundred seventy-two, one

hundred seventy-three, one hundred seventy-six, one hundred eighty-four, one hundred eighty-four-a, one hundred eighty-five, one hundred eighty-five-a, one hundred eighty-six, or one hundred eighty-seven of this article shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not to exceed [one thousand] TWO THOUSAND FIVE HUNDRED dollars PER VIOLATION, or imprisonment for not more than one year, or both, by any court of competent jurisdiction. The violation of any other provision of this article shall be punishable by a fine not to exceed [one] FIVE hundred dollars or imprisonment for not more than thirty days. Criminal proceedings based upon violations of these sections shall be instituted by the commissioner, THE ATTORNEY GENERAL, OR A DISTRICT ATTORNEY and may be instituted by any persons aggrieved by such violations.

S 11. The general business law is amended by adding a new section 195 to read as follows:

S 195. PROTECTION FROM RETALIATION. IT SHALL BE UNLAWFUL FOR ANY EMPLOYMENT AGENCY TO RETALIATE OR DISCRIMINATE AGAINST ANY PERSON BECAUSE HE OR SHE HAS OPPOSED ANY PRACTICE OR PRACTICES FORBIDDEN UNDER THIS ARTICLE OR BECAUSE THAT PERSON HAS FILED A COMPLAINT, TESTIFIED OR ASSISTED IN ANY PROCEEDING UNDER THIS ARTICLE.

S 12. This act shall take effect immediately.