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2015-2016 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2015

Introduced by Sen. ESPAILLAT -- 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 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:

1 Section 1. Subdivision 1 of section 185 of the general business law,
2 as amended by chapter 460 of the laws of 2012, is amended and a new
3 subdivision 1-a is added to read as follows:
4 1. Circumstances permitting fee. An employment agency shall not charge
5 or accept a fee or other consideration unless in accordance with the
6 terms of a written contract with a job applicant[, except:
7 (a) for class "A" and "A-1" employment, and except] AND after such
8 agency has been responsible for referring such job applicant to an
9 employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer[; and
10 (b)], EXCEPT for class "C" employment: [(i)] (A) after an agency has
11 been responsible for referring an artist to an employer or such employer
12 to an artist and where as a result thereof such artist has been employed
13 by such employer; or [(ii)] (B) after an agency represents an artist in
14 the negotiation or renegotiation of an original or pre-existing employment contract and where as a result thereof the artist enters into a
15 negotiated or renegotiated employment contract. For class "C" employment
16 pursuant to this paragraph, an employment agency shall provide an artist
17 with a statement setting forth in a clear and concise manner the
18 provisions of this section and section one hundred eighty-six of this
19 article. The maximum fees provided for herein for all types of placements or employment may be charged to the job applicant and a similar
20 fee may be charged to the employer provided, however, that with regard
21 to placements in class "B" employment, a fee of up to one and one-half
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EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

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

11 1-A. FEE REFUND. AN EMPLOYMENT AGENCY WHO HAS CHARGED OR ACCEPTED A
12 FEE OR OTHER CONSIDERATION FOR CLASSES "A" AND "A-1" EMPLOYMENT WITHOUT
13 A CONTRACT PRIOR TO OCTOBER FIRST, TWO THOUSAND FIFTEEN SHALL REFUND THE
14 FULL AMOUNT TO THE JOB APPLICANT BY NOVEMBER FIRST, TWO THOUSAND FIFTEEN
15 IF: (I) SUCH FEE OR CONSIDERATION DID NOT LEAD TO THE JOB APPLICANT
16 OBTAINING EMPLOYMENT THROUGH THE EMPLOYMENT AGENCY; OR (II) THE FEE OR
17 CONSIDERATION WAS NOT APPLIED TO THE JOB APPLICANT'S ACCOUNT FOR
18 SERVICES RENDERED BY THE EMPLOYMENT AGENCY.

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

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

39 S 3. This act shall take effect October 1, 2015.