

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

- 1 Section 1. Section 171 of the general business law is amended by
2 adding a new subdivision 12 to read as follows:
3 12. "BONA FIDE ORDER" MEANS A WRITTEN ORDER FROM AN EMPLOYER DIRECTED
4 TO AN EMPLOYMENT AGENCY STATING THAT THE EMPLOYER REQUESTS THAT THE
5 EMPLOYMENT AGENCY REFER ONE OR MORE JOB APPLICANTS FOR A SPECIFIC POSI-
6 TION OR POSITIONS WITHIN A SPECIFIED AND LIMITED APPLICATION PERIOD. AN
7 EMPLOYMENT AGENCY MUST RENEW A BONA FIDE ORDER AFTER FORTY-FIVE DAYS IF
8 IT INTENDS TO REFER AN APPLICANT FOR THE POSITION DESCRIBED IN SUCH BONA
9 FIDE ORDER, AND THE EMPLOYMENT AGENCY MUST SPECIFY ON THE BONA FIDE
10 ORDER THE NAME OF THE REPRESENTATIVE OF THE PROSPECTIVE EMPLOYER WHO
11 AUTHORIZED THE RENEWAL AND THE DATE ON WHICH THE RENEWAL WAS AUTHORIZED.
12 THE BONA FIDE ORDER SHALL ALSO INCLUDE A WRITTEN STATEMENT SETTING FORTH
13 THE TERMS AND CONDITIONS OF EMPLOYMENT FOR THE POSITION DESCRIBED IN THE
14 ORDER; SUCH WRITTEN STATEMENT SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING
15 INFORMATION:
16 A. THE NAME OF THE EMPLOYER, ANY "DOING BUSINESS AS" NAMES USED BY THE
17 EMPLOYER, THE PHYSICAL ADDRESS OF THE EMPLOYER'S MAIN OFFICE OR PRINCI-
18 PAL PLACE OF BUSINESS, AND A MAILING ADDRESS IF DIFFERENT, THE TELEPHONE
19 NUMBER OF THE EMPLOYER, PLUS SUCH OTHER INFORMATION AS THE COMMISSIONER
20 DEEMS MATERIAL AND NECESSARY;
21 B. THE PLACE OR PLACES OF EMPLOYMENT;
22 C. THE HOURS OF WORK PER DAY AND NUMBER OF DAYS PER WEEK TO BE WORKED;
23 D. THE RATE OR RATES OF PAY AND BASIS THEREOF, WHETHER PAID BY THE
24 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.

LBD06774-01-5

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

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

6 F. THE ANTICIPATED PERIOD OF EMPLOYMENT;

7 G. ANY PROVISION TO THE EMPLOYEE, AND HOW LONG THE PROVISION WILL BE
8 PROVIDED BY THE EMPLOYER, AND ANY COSTS TO THE EMPLOYEE ASSOCIATED WITH
9 THE PROVISION, INCLUDING BUT NOT LIMITED TO, TRANSPORTATION TO AND FROM
10 WORK, HOUSING, HEALTH INSURANCE OR HEALTH CARE, PAID SICK OR ANNUAL
11 LEAVE AND HOLIDAY OR HOLIDAYS, PENSION OR RETIREMENT BENEFITS, PERSONAL
12 PROTECTIVE EQUIPMENT REQUIRED FOR WORK, WORKERS' COMPENSATION AND INFOR-
13 MATION ABOUT THE INSURANCE POLICY AND RULES REGARDING REPORTING OF ACCI-
14 DENTS OR INJURIES, AND UNEMPLOYMENT COMPENSATION; AND

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

16 S 2. Paragraph b of subdivision 2 of section 173 of the general busi-
17 ness law, as added by chapter 632 of the laws of 1975, is amended to
18 read as follows:

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

29 S 3. Subdivisions 1 and 2 of section 174 of the general business law,
30 subdivision 1 as amended by chapter 164 of the laws of 2003, subdivision
31 2 as amended by chapter 632 of the laws of 1975, are amended to read as
32 follows:

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

44 The commissioner shall require all applicants for licenses and agency
45 managers to be fingerprinted. Such fingerprints shall be submitted to
46 the division of criminal justice services for a state criminal history
47 record check, as defined in subdivision one of section three thousand
48 thirty-five of the education law, and may be submitted to the federal
49 bureau of investigation for a national criminal history record check.
50 THE CRIMINAL HISTORY INFORMATION, IF ANY, RECEIVED BY THE DEPARTMENT OF
51 LABOR SHALL BE CONSIDERED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE
52 TWENTY-THREE-A OF THE CORRECTION LAW AND SUBDIVISIONS FIFTEEN AND
53 SIXTEEN OF SECTION TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW. A
54 REASONABLE TIME BEFORE MAKING A DETERMINATION ON THE APPLICATION PURSU-
55 ANT TO THIS SUBDIVISION, THE DEPARTMENT SHALL PROVIDE THE APPLICANT
56 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

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

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

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

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

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

1 WORK, HOUSING, HEALTH INSURANCE OR HEALTH CARE, PAID SICK OR ANNUAL
2 LEAVE AND HOLIDAY OR HOLIDAYS, PENSION OR RETIREMENT BENEFITS, PERSONAL
3 PROTECTIVE EQUIPMENT REQUIRED FOR WORK, WORKERS' COMPENSATION AND INFOR-
4 MATION ABOUT THE INSURANCE POLICY AND RULES REGARDING REPORTING OF ACCI-
5 DENTS OR INJURIES, AND UNEMPLOYMENT COMPENSATION; AND (VIII) THE NATURE
6 OF THE WORK TO BE PERFORMED BY THE EMPLOYEE.

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

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

20 (D) AN EMPLOYMENT AGENCY SHALL NOT BE PENALIZED FOR ERRORS OR OMIS-
21 SIONS IN THE NON-ENGLISH PORTIONS OF ANY NOTICE PROVIDED BY THE COMMIS-
22 SIONER.

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

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

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

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

14 S 6. Subdivisions 1 and 3 of section 185 of the general business law,
15 subdivision 1 as amended by chapter 460 of the laws of 2012 and subdivi-
16 sion 3 as amended by chapter 1010 of the laws of 1960, are amended and a
17 new subdivision 1-a is added to read as follows:

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

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

25 (b)], EXCEPT for class "C" employment: [(i)] (A) after an agency has
26 been responsible for referring an artist to an employer or such employer
27 to an artist and where as a result thereof such artist has been employed
28 by such employer; or [(ii)] (B) after an agency represents an artist in
29 the negotiation or renegotiation of an original or pre-existing employ-
30 ment contract and where as a result thereof the artist enters into a
31 negotiated or renegotiated employment contract. For class "C" employment
32 pursuant to this paragraph, an employment agency shall provide an artist
33 with a statement setting forth in a clear and concise manner the
34 provisions of this section and section one hundred eighty-six of this
35 article.

36 The maximum fees provided for herein for all types of placements or
37 employment may be charged to the job applicant and a similar fee may be
38 charged to the employer provided, however, that with regard to place-
39 ments in class "B" employment, a fee of up to one and one-half times the
40 fee charged to the job applicant may be charged to the employer. By
41 agreement with an employment agency, the employer may voluntarily assume
42 payment of the job applicant's fee. The fees charged to employers by any
43 licensed person conducting an employment agency for rendering services
44 in connection with, or for providing employment in classes "A", "A-1"
45 and "B", as hereinafter defined in subdivision four of this section
46 where the applicant is not charged a fee shall be determined by agree-
47 ment between the employer and the employment agency. No fee shall be
48 charged or accepted for the registration of applicants for employees or
49 employment.

50 1-A. FEE REFUND. AN EMPLOYMENT AGENCY WHO HAS CHARGED OR ACCEPTED A
51 FEE OR OTHER CONSIDERATION FOR CLASSES "A" AND "A-1" EMPLOYMENT WITHOUT
52 A CONTRACT PRIOR TO OCTOBER FIRST, TWO THOUSAND FIFTEEN, SHALL REFUND
53 THE FULL AMOUNT TO THE JOB APPLICANT BY NOVEMBER FIRST, TWO THOUSAND
54 SIXTEEN, IF: (A) SUCH FEE OR CONSIDERATION DID NOT LEAD TO THE JOB
55 APPLICANT OBTAINING EMPLOYMENT THROUGH THE EMPLOYMENT AGENCY; OR (B) THE

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

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

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

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

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

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

36 S 9. Section 189 of the general business law, as amended by chapter
37 479 of the laws of 1963, subdivisions 1 and 2 as amended by chapter 721
38 of the laws of 2004, subdivisions 4 and 5 as amended by chapter 632 of
39 the laws of 1975, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

51 S 10. Section 190 of the general business law, as amended by chapter
52 632 of the laws of 1975, is amended to read as follows:

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

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

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

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

21 S 12. This act shall take effect immediately.