

5981

2015-2016 Regular Sessions

I N S E N A T E

June 15, 2015

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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. AN EMPLOYMENT AGENCY MUST RENEW A BONA FIDE ORDER
7 AFTER FORTY-FIVE DAYS IF IT INTENDS TO REFER AN APPLICANT FOR THE POSI-
8 TION DESCRIBED IN SUCH BONA FIDE ORDER, AND THE EMPLOYMENT AGENCY MUST
9 SPECIFY ON THE BONA FIDE ORDER THE NAME OF THE REPRESENTATIVE OF THE
10 PROSPECTIVE EMPLOYER WHO AUTHORIZED THE RENEWAL AND THE DATE ON WHICH
11 THE RENEWAL WAS AUTHORIZED. THE BONA FIDE ORDER SHALL ALSO INCLUDE A
12 WRITTEN STATEMENT SETTING FORTH THE TERMS AND CONDITIONS OF EMPLOYMENT
13 FOR THE POSITION DESCRIBED IN THE ORDER; SUCH WRITTEN STATEMENT SHALL
14 INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION:
15 A. THE NAME OF THE EMPLOYER, ANY "DOING BUSINESS AS" NAMES USED BY THE
16 EMPLOYER, THE PHYSICAL ADDRESS OF THE EMPLOYER'S MAIN OFFICE OR PRINCI-
17 PAL PLACE OF BUSINESS, AND A MAILING ADDRESS IF DIFFERENT, THE TELEPHONE
18 NUMBER OF THE EMPLOYER, PLUS SUCH OTHER INFORMATION AS THE COMMISSIONER
19 DEEMS MATERIAL AND NECESSARY;
20 B. ADDRESSES OF EMPLOYMENT;
21 C. THE HOURS OF WORK PER DAY AND NUMBER OF DAYS PER WEEK TO BE WORKED;
22 D. THE RATE OR RATES OF PAY AND BASIS THEREOF, WHETHER PAID BY THE
23 HOUR, SHIFT, DAY, WEEK, SALARY, PIECE, COMMISSION, OR OTHER, ALLOWANCES,
24 IF ANY, CLAIMED AS PART OF THE MINIMUM WAGE, INCLUDING TIP, MEAL, OR
25 LODGING ALLOWANCES;

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

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

4 F. THE ANTICIPATED PERIOD OF EMPLOYMENT;

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

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

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

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

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

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

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

1 OR HER RIGHT TO SEEK CORRECTION OF ANY INCORRECT INFORMATION CONTAINED
2 IN SUCH CRIMINAL HISTORY INFORMATION PURSUANT TO THE REGULATIONS AND
3 PROCEDURES ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

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

29 S 4. Section 179 of the general business law, as amended by chapter
30 632 of the laws of 1975, is amended to read as follows:

31 S 179. Registers and other records to be kept. It shall be the duty of
32 every licensed person to keep a register, approved by the commissioner,
33 in which shall be entered, in the English language, the date of the
34 application for employment, the date the applicant started work and the
35 name and address of every applicant from whom a fee or deposit is
36 charged, the amount of the fee or deposit and the service for which it
37 is received or charged. Such licensed person shall also enter in the
38 same or in a separate register, approved by the commissioner, in the
39 English language, the name and address of every employer from whom a fee
40 is received or charged or to whom the licensed person refers an appli-
41 cant who has paid or is charged a fee, the date of such employer's
42 request or assent that applicants be furnished, the kind of position for
43 which applicants are requested, the names of the applicants sent from
44 whom a fee or deposit is received or charged with the designation of the
45 one employed, the amount of the fee or deposit charged, and the rate of
46 salary or wages agreed upon. It shall also be the duty of every licensed
47 person to keep complete and accurate written records in the English
48 language of all receipts and income received or derived directly from
49 the operation of his employment agency, and to keep records concerning
50 [job] BONA FIDE orders. No such licensed person, his agent or employees,
51 shall make any false entry in such records. It shall be the duty of
52 every licensed person to communicate orally or in writing with at least
53 one of the persons mentioned as references for every applicant for work
54 in private families, or employed in a fiduciary capacity, and the result
55 of such investigation shall be kept on file in such agency for a period
56 of at least three years. Every register and all records, INCLUDING BONA

1 FIDE ORDERS, kept pursuant to the requirements of this article shall be
2 retained on the premises of the agency concerned for three years follow-
3 ing the date on which the last entry thereon was made [except a job
4 order which shall be retained for one year following the date on which
5 it was received].

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

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

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

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

MENT 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 PROVIDED IN ENGLISH AND IN THE DISCRETION OF THE COMMISSION, OTHER LANGUAGES 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.

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.

4. 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 THREE OF THIS SECTION SHALL BE RETAINED BY EVERY EMPLOYMENT AGENCY FOR THREE YEARS

1 FOLLOWING THE DATE ON WHICH THE CONTRACT IS EXECUTED. THE RECORDS
2 REQUIRED UNDER THIS SUBDIVISION SHALL BE MADE AVAILABLE FOR INSPECTION
3 BY THE COMMISSIONER OR HIS OR HER DULY AUTHORIZED AGENT OR INSPECTOR,
4 UPON SUCH REQUEST.

5 S 6. Subdivisions 1 and 3 of section 185 of the general business law,
6 subdivision 1 as amended by chapter 460 of the laws of 2012 and subdivi-
7 sion 3 as amended by chapter 1010 of the laws of 1960, are amended to
8 read as follows:

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

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

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

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

41 3. Deposits, advance fees. Notwithstanding any other provisions of
42 this section, an employment agency [may] SHALL not require OR ACCEPT a
43 deposit or advance fee from any applicant [except an applicant for class
44 "A" or class "A1" employment, and only to the extent of the maximum fees
45 hereinafter provided. Such deposit or advance fee shall be offset
46 against any fee charged or accepted when such employment is obtained.
47 Any excess above the lawful fee shall be returned without demand there-
48 for, immediately after the employment agency has been notified that such
49 employment has been obtained; and all of such deposit or advance fee
50 shall be returned immediately upon demand therefor, if at the time of
51 the demand such employment has not been obtained].

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

55 2. Failure to report: If a job applicant accepts employment and there-
56 after fails to report for work, the gross fee charged to such applicant

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

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

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

12 S 9. Section 189 of the general business law, as amended by chapter
13 479 of the laws of 1963, subdivisions 1 and 2 as amended by chapter 721
14 of the laws of 2004, subdivisions 4 and 5 as amended by chapter 632 of
15 the laws of 1975, is amended to read as follows:

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

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, receipt books, appli-
31 cation forms, referral forms, reference forms, reference reports and
32 financial records of fees charged and refunds made of each employment
33 agency, which are essential to the operation of such agency, and of each
34 applicant for an employment agency license, as frequently as necessary
35 to ensure compliance with this article and such sections; but in]
36 EMPLOYMENT AGENCIES AND APPLICANTS FOR AN EMPLOYMENT AGENCY LICENSE AS
37 FREQUENTLY AS NECESSARY TO ENSURE COMPLIANCE WITH THIS ARTICLE. THE
38 FOLLOWING SHALL BE SUBJECT TO INSPECTION: THE PREMISES; REGISTERS;
39 CONTRACTS SIGNED BY JOB APPLICANTS; STATEMENTS OF TERMS AND CONDITIONS;
40 RECEIPTS; APPLICATION FORMS; REFERRAL FORMS; BONA FIDE ORDERS FROM
41 PROSPECTIVE EMPLOYERS; WRITTEN NOTIFICATIONS FROM EMPLOYERS REQUIRED BY
42 SECTION ONE HUNDRED EIGHTY-SEVEN OF THIS ARTICLE; REFERENCE FORMS;
43 REFERENCE REPORTS; RECORDS OF FEES CHARGED; RECORDS OF REFUNDS MADE; AND
44 ANY OTHER RECORD THAT AN EMPLOYMENT AGENCY MUST MAINTAIN PURSUANT TO
45 THIS ARTICLE. IN no event shall any employment agency be inspected less
46 frequently than once every eighteen months. INSPECTIONS MAY CONSIST OF
47 IN-PERSON VISITS TO EMPLOYMENT AGENCIES. The commissioner shall also
48 have authority to subpoena records and witnesses or otherwise to conduct
49 investigations of any employer or other person where he or she has
50 reasonable grounds for believing that such employer or person is violat-
51 ing or has conspired or is conspiring with an employment agency to
52 violate this article or such sections.

53 3. To effectuate the purposes of this article, the commissioner may
54 make reasonable administrative rules within the standards set in this
55 article. Before such rules shall be issued, the commissioner shall
56 conduct a public hearing, giving due notice thereof to all interested

1 parties. No rule shall become effective until fifteen days after it has
2 been filed in the office of the department of state, if it is a rule of
3 the industrial commissioner, or in the office of the clerk of the city
4 of New York, if it is a rule of the commissioner of licenses of such
5 city, and copies thereof shall be furnished to all employment agencies
6 affected at least fifteen days prior to the effective date of such rule.

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

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

1 hearings and act upon applications for licenses, and revoke or suspend
2 such licenses, or levy fines AGAINST AN EMPLOYMENT AGENCY.

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

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

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

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

18 S 10. Section 190 of the general business law, as amended by chapter
19 632 of the laws of 1975, is amended to read as follows:

20 S 190. Penalties for violations. Any person who violates and the offi-
21 cers of a corporation and stockholders holding ten percent or more of
22 the stock of a corporation which is not publicly traded, who knowingly
23 permit the corporation to violate sections one hundred seventy-two, one
24 hundred seventy-three, one hundred seventy-six, one hundred eighty-four,
25 one hundred eighty-four-a, one hundred eighty-five, one hundred eighty-
26 five-a, one hundred eighty-six, or one hundred eighty-seven of this
27 article shall be guilty of a misdemeanor and upon conviction shall be
28 subject to a fine not to exceed [one thousand] TWO THOUSAND FIVE HUNDRED
29 dollars PER VIOLATION, or imprisonment for not more than one year, or
30 both, by any court of competent jurisdiction. The violation of any other
31 provision of this article shall be punishable by a fine not to exceed
32 [one] FIVE hundred dollars or imprisonment for not more than thirty
33 days. Criminal proceedings based upon violations of these sections shall
34 be instituted by the commissioner, THE ATTORNEY GENERAL, OR A DISTRICT
35 ATTORNEY and may be instituted by any persons aggrieved by such
36 violations.

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

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

44 S 12. This act shall take effect immediately.