
SENATE BILL 5863

State of Washington

53rd Legislature

1993 Regular Session

By Senator West

Read first time 02/18/93. Referred to Committee on Labor & Commerce.

1 AN ACT Relating to employment agencies; and amending RCW 19.31.020,
2 19.31.030, 19.31.040, 19.31.150, 19.31.170, 19.31.190, and 19.31.245.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 19.31.020 and 1990 c 70 s 1 are each amended to read
5 as follows:

6 Unless a different meaning is clearly required by the context, the
7 following words and phrases, as hereinafter used in this chapter, shall
8 have the following meanings:

9 (1) "Employment agency" is synonymous with "agency" and shall mean
10 any business in which any part of the business gross or net income is
11 derived from a fee received from applicants, and in which any of the
12 following activities are engaged in:

13 (a) The offering, promising, procuring, or attempting to procure
14 employment for applicants; ~~((or))~~

15 (b) The giving of information regarding where and from whom
16 employment may be obtained; or

17 (c) The sale of a list of jobs or a list of names of persons or
18 companies accepting applications for specific positions, in any form.

1 In addition the term "employment agency" shall mean and include any
2 person, bureau, employment listing (~~(or employment referral)~~) service,
3 organization, or school which for profit, by advertisement or
4 otherwise, offers, as one of its main objects or purposes, to procure
5 employment for any person who pays for its services, or which collects
6 tuition, or charges for service of any nature, where the main object of
7 the person paying the same is to secure employment. It also includes
8 any business that provides a resume to an individual and provides that
9 person with a list of names to whom the resume may be sent or provides
10 that person with preaddressed envelopes to be mailed by the individual
11 or by the business itself, if the list of names or the preaddressed
12 envelopes have been compiled and are represented by the business as
13 having job openings. The term "employment agency" shall not include
14 labor union organizations, temporary service contractors, proprietary
15 schools, nonprofit schools and colleges, career guidance and counseling
16 services, theatrical agencies, farm labor contractors, or the
17 Washington state employment agency.

18 (2) "Temporary service contractors" shall mean any person, firm,
19 association, or corporation conducting a business which consists of
20 employing individuals directly for the purpose of furnishing such
21 individuals on a part time or temporary help basis to others.

22 (3) "Theatrical agency" means any person who, for a fee or
23 commission, procures or attempts to procure on behalf of an individual
24 or individuals, employment or engagements for circus, vaudeville, the
25 variety field, the legitimate theater, motion pictures, radio,
26 television, phonograph recordings, transcriptions, opera, concert,
27 ballet, modeling, or other entertainments, exhibitions, or
28 performances.

29 (4) "Farm labor contractor" means any person, or his agent, who,
30 for a fee, employs workers to render personal services in connection
31 with the production of any farm products, to, for, or under the
32 direction of an employer engaged in the growing, producing, or
33 harvesting of farm products, or who recruits, solicits, supplies, or
34 hires workers on behalf of an employer engaged in the growing,
35 producing, or harvesting of farm products or who provides in connection
36 with recruiting, soliciting, supplying, or hiring workers engaged in
37 the growing, producing, or harvesting of farm products, one or more of
38 the following services: Furnishes board, lodging, or transportation
39 for such workers, supervises, times, checks, counts, sizes, or

1 otherwise directs or measures their work; or disburses wage payments to
2 such persons.

3 (5) "Employer" means any person, firm, corporation, partnership, or
4 association employing or seeking to enter into an arrangement to employ
5 a person through the medium or service of an employment agency.

6 (6) "Applicant", except when used to describe an applicant for an
7 employment agency license, means any person, whether employed or
8 unemployed, seeking or entering into any arrangement for his employment
9 or change of his employment through the medium or service of an
10 employment agency.

11 (7) "Person" includes any individual, firm, corporation,
12 partnership, association, company, society, manager, contractor,
13 subcontractor, bureau, agency, service, office, or an agent or employee
14 of any of the foregoing.

15 (8) "Director" shall mean the director of licensing.

16 (9) "Resume" means a document of the applicant's employment history
17 that is approved, received, and paid for by the applicant.

18 (10) "Fee" means anything of value. The term includes money or
19 other valuable consideration or services or the promise of money or
20 other valuable consideration or services, received directly or
21 indirectly by an employment agency from a person seeking employment, in
22 payment for the service.

23 (11) "Employment listing service" means any business operated by
24 any person that provides in any form, including written or verbal,
25 lists of specified positions of employment available with any employer
26 other than itself or that holds itself out to applicants as able to
27 provide information about specific positions of employment available
28 with any employer other than itself, and that charges a fee to the
29 applicant for its services and does not set up interviews or otherwise
30 intercede between employer and applicant.

31 (12) "Career guidance and counseling service" means any person,
32 firm, association, or corporation conducting a business that engages in
33 any of the following activities:

34 (a) Career assessment, planning, or testing through individual
35 counseling or group seminars, classes, or workshops;

36 (b) Skills analysis, resume writing, and preparation through
37 individual counseling or group seminars, classes, or workshops; or

38 (c) Training in job search or interviewing skills through
39 individual counseling or group seminars, classes, or workshops:

1 PROVIDED, That the career guidance and counseling service does not
2 engage in any of the following activities:

3 (i) Contacts employers on behalf of an applicant or in any way
4 intercedes between employer and applicant;

5 (ii) Provides information on specific job openings; or

6 (iii) Holds itself out as able to provide referrals to specific
7 companies or individuals who have specific job openings.

8 **Sec. 2.** RCW 19.31.030 and 1969 ex.s. c 228 s 3 are each amended to
9 read as follows:

10 Each employment agency shall keep records of all services rendered
11 employers and applicants. These records shall contain the name and
12 address of the employer by whom the services were solicited; the name
13 and address of the applicant; kind of position ordered by the employer;
14 dates of contact with employer; dates job orders or job listings are
15 obtained; subsequent dates job orders or job listings are verified as
16 still being current; kind of position accepted by the applicant;
17 probable duration of the employment, if known; rate of wage or salary
18 to be paid the applicant; amount of the employment agency's fee; dates
19 and amounts of refund if any, and reason for such refund; and the
20 contract agreed to between the agency and applicant. An employment
21 listing service need not keep records pertaining to the kind of
22 position accepted by applicant and probable duration of employment.

23 The director shall have authority to demand and to examine, at the
24 employment agency's regular place of business, all books, documents,
25 and records in its possession for inspection. Unless otherwise
26 provided by rules or regulation adopted by the director, such records
27 shall be maintained for a period of three years from the date in which
28 they are made.

29 **Sec. 3.** RCW 19.31.040 and 1985 c 7 s 83 are each amended to read
30 as follows:

31 An employment agency shall provide each applicant with a copy of
32 the contract between the applicant and employment agency which shall
33 have printed on it or attached to it a copy of RCW 19.31.170 as now or
34 hereafter amended. Such contract shall contain the following:

35 (1) The name, address, and telephone number of the employment
36 agency;

37 (2) Trade name if any;

1 (3) The date of the contract;
2 (4) The name of the applicant;
3 (5) The amount of the fee to be charged the applicant, or the
4 method of computation of the fee, and the time and method of payments:
5 PROVIDED, HOWEVER, That if the provisions of the contract come within
6 the definition of a "retail installment transaction", as defined in RCW
7 63.14.010, the contract shall conform to the requirements of chapter
8 63.14 RCW, as now or hereafter amended;

9 (6) A notice in eight-point bold face type or larger directly above
10 the space reserved in the contract for the signature of the buyer. The
11 caption, "NOTICE TO APPLICANT--READ BEFORE SIGNING" shall precede the
12 body of the notice and shall be in ten-point bold face type or larger.
13 The notice shall read as follows:

14 "This is a contract. If you accept employment with any employer
15 through [name of employment agency] you will be liable for the payment
16 of the fee as set out above. Do not sign this contract before you read
17 it or if any spaces intended for the agreed terms are left blank. You
18 must be given a copy of this contract at the time you sign it."

19 The notice for an employment listing service shall read as follows:

20 "This is a contract. You understand (the employment listing
21 service) provides information on bona fide job listings but does not
22 guarantee you will obtain employment through its services. You also
23 understand you are liable for the payment of the fee when you receive
24 the list or referral. Do not sign this contract before you read it or
25 if any spaces intended for the agreed terms are left blank. You must
26 be given a copy of this contract at the time you sign it."

27 **Sec. 4.** RCW 19.31.150 and 1969 ex.s. c 228 s 15 are each amended
28 to read as follows:

29 (1) Except as otherwise provided in subsection (2) of this section,
30 no employment agency shall charge or accept a fee or other
31 consideration from an applicant without complying with the terms of a
32 written contract as specified in RCW 19.31.040, and then only after
33 such agency has been responsible for referring such job applicant to an
34 employer or such employer to a job applicant and where as a result
35 thereof such job applicant has been employed by such employer.

36 (2) Employment listing services may charge or accept a fee when
37 they provide the applicant with the job listing or the referral.

1 **Sec. 5.** RCW 19.31.170 and 1977 ex.s. c 51 s 7 are each amended to
2 read as follows:

3 (1) If an applicant accepts employment by agreement with an
4 employer and thereafter never reports for work, the gross fee charged
5 to the applicant shall not exceed: (a) Ten percent of what the first
6 month's gross salary or wages would be, if known; or (b) ten percent of
7 the first month's drawing account. If the employment was to have been
8 on a commission basis without any drawing account, then no fee may be
9 charged in the event that the applicant never reports for work.

10 (2) If an applicant accepts employment on a commission basis
11 without any drawing account, then the gross fee charged such applicant
12 shall be a percentage of commissions actually earned.

13 (3) If an applicant accepts employment and if within sixty days of
14 his reporting for work the employment is terminated, then the gross fee
15 charged such applicant shall not exceed twenty percent of the gross
16 salary, wages or commission received by him.

17 (4) If an applicant accepts temporary employment as a domestic,
18 household employee, baby sitter, agricultural worker, or day laborer,
19 then the gross fee charged such applicant shall not be in excess of
20 twenty-five percent of the first full month's gross salary or wages:
21 PROVIDED, That where an applicant accepts employment as a domestic or
22 household employee for a period of less than one month, then the gross
23 fee charged such applicant shall not exceed twenty-five percent of the
24 gross salary or wages paid.

25 (5) Any applicant requesting a refund of a fee paid to an
26 employment agency in accordance with the terms of the approved fee
27 schedule of the employment agency pursuant to this section shall file
28 with the employment agency a form requesting such refund on which shall
29 be set forth information reasonably needed and requested by the
30 employment agency, including but not limited to the following:
31 Circumstances under which employment was terminated, dates of
32 employment, and gross earnings of the applicant.

33 (6) Refund requests which are not in dispute shall be made by the
34 employment agency within thirty days of receipt.

35 (7) Subsections (1) through (6) of this section do not apply to
36 employment listing services.

37 **Sec. 6.** RCW 19.31.190 and 1977 ex.s. c 51 s 8 are each amended to
38 read as follows:

1 In addition to the other provisions of this chapter the following
2 rules shall govern each and every employment agency:

3 (1) Every license or a verified copy thereof shall be displayed in
4 a conspicuous place in each office of the employment agency;

5 (2) No fee shall be solicited or accepted as an application or
6 registration fee by any employment agency solely for the purpose of
7 being registered as an applicant for employment;

8 (3) No licensee or agent of the licensee shall solicit, persuade,
9 or induce an employee to leave any employment in which the licensee or
10 agent of the licensee has placed the employee; nor shall any licensee
11 or agent of the licensee persuade or induce or solicit any employer to
12 discharge any employee;

13 (4) No employment agency shall knowingly cause to be printed or
14 published a false or fraudulent notice or advertisement for obtaining
15 work or employment. All advertising by a licensee shall signify that
16 it is an employment agency solicitation except an employment listing
17 service shall advertise it is an employment listing service;

18 (5) No licensee shall fail to state in any advertisement, proposal
19 or contract for employment that there is a strike or lockout at the
20 place of proposed employment, if he has knowledge that such condition
21 exists;

22 (6) No licensee or agent of a licensee shall directly or indirectly
23 split, divide, or share with an employer any fee, charge, or
24 compensation received from any applicant who has obtained employment
25 with such employer or with any other person connected with the business
26 of such employer;

27 (7) When an applicant is referred to the same employer by two
28 licensees, the fee shall be paid to the licensee who first contacted
29 the applicant concerning the position for that applicant: PROVIDED,
30 That the licensee has given the name of the employer to the applicant
31 and has within five working days arranged an interview with the
32 employer and the applicant was hired as the result of that interview;

33 (8) No licensee shall require in any manner that a potential
34 employee or an employee of an employer make any contract with any
35 lending agency for the purpose of fulfilling a financial obligation to
36 the licensee;

37 (9) All job listings must be bona fide job listings. To qualify as
38 a bona fide job listing the following conditions must be met:

1 (a) A bona fide job listing must be obtained from a representative
2 of the employer that reflects an actual current job opening;

3 (b) A representative of the employer must be aware of the fact that
4 the job listing will be made available to applicants by the employment
5 listing service and that applicants will be applying for the job
6 listing;

7 (c) All job listings and referrals must be current. To qualify as
8 a current job listing the employment listing service shall contact the
9 employer and verify the availability of the job listing no less than
10 once per week.

11 (10) Any aggrieved person, firm, corporation, or public officer may
12 submit a written complaint to the director charging the holder of an
13 employment agency license with violation of this chapter and/or the
14 rules and regulations adopted pursuant to this chapter.

15 **Sec. 7.** RCW 19.31.245 and 1990 c 70 s 2 are each amended to read
16 as follows:

17 (1) No employment agency may bring or maintain a cause of action in
18 any court of this state for compensation for, or seeking equitable
19 relief in regard to, services rendered employers and applicants, unless
20 such agency shall allege and prove that at the time of rendering the
21 services in question, or making the contract therefor, it was the
22 holder of a valid license issued under this chapter.

23 (2) Any person who shall give consideration of any kind to any
24 employment agency for the performance of employment services in this
25 state when said employment agency shall not be the holder of a valid
26 license issued under this chapter shall have a cause of action against
27 the employment agency. Any court having jurisdiction may enter
28 judgment therein for treble the amount of such consideration so paid,
29 plus reasonable attorney's fees and costs.

30 (3) A person performing the services of an employment agency or
31 employment listing (~~(or employment referral)~~) service without holding
32 a valid license shall cease operations or immediately apply for (~~and~~
33 ~~obtain~~) a valid license. If the person continues to operate in
34 violation of this chapter the director or the attorney general has a
35 cause of action in any court having jurisdiction for the return of any
36 consideration paid by any person to the agency. The court may enter

1 judgment in the action for treble the amount of the consideration so
2 paid, plus reasonable attorney's fees and costs.

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