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SENATE BILL 5863

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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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