

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1496

Chapter 499, Laws of 1993

53rd Legislature
1993 Regular Session

EMPLOYMENT DIRECTORY AND EMPLOYMENT LISTING SERVICES

EFFECTIVE DATE: 7/25/93

Passed by the House April 20, 1993
Yeas 97 Nays 0

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Passed by the Senate April 15, 1993
Yeas 44 Nays 0

JOEL PRITCHARD
President of the Senate

Approved May 18, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1496** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 18, 1993 - 2:30 p.m.

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1496

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representative Dellwo)

Read first time 03/03/93.

1 AN ACT Relating to employment agencies; and amending RCW 19.31.020,
2 19.31.030, 19.31.040, 19.31.100, 19.31.150, 19.31.170, 19.31.190, and
3 19.31.245.

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

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

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

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

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

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

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

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

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

32 (4) "Farm labor contractor" means any person, or his agent, who,
33 for a fee, employs workers to render personal services in connection
34 with the production of any farm products, to, for, or under the
35 direction of an employer engaged in the growing, producing, or
36 harvesting of farm products, or who recruits, solicits, supplies, or
37 hires workers on behalf of an employer engaged in the growing,
38 producing, or harvesting of farm products or who provides in connection
39 with recruiting, soliciting, supplying, or hiring workers engaged in

1 the growing, producing, or harvesting of farm products, one or more of
2 the following services: Furnishes board, lodging, or transportation
3 for such workers, supervises, times, checks, counts, sizes, or
4 otherwise directs or measures their work; or disburses wage payments to
5 such persons.

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

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

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

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

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

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

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

34 (12) "Employment directory" means any business operated by any
35 person that provides in any form, including written or verbal, lists of
36 employers, does not provide lists of specified positions of employment,
37 that holds itself out to applicants as able to provide information on
38 employment in specific industries or geographical areas, and that
39 charges a fee to the applicant for its services.

1 (13) "Career guidance and counseling service" means any person,
2 firm, association, or corporation conducting a business that engages in
3 any of the following activities:

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

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

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

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

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

14 (ii) Provides information on specific job openings;

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

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

19 Each employment agency shall keep records of all services rendered
20 employers and applicants. These records shall contain the name and
21 address of the employer by whom the services were solicited; the name
22 and address of the applicant; kind of position ordered by the employer;
23 dates job orders or job listings are obtained; subsequent dates job
24 orders or job listings are verified as still being current; kind of
25 position accepted by the applicant; probable duration of the
26 employment, if known; rate of wage or salary to be paid the applicant;
27 amount of the employment agency's fee; dates and amounts of refund if
28 any, and reason for such refund; and the contract agreed to between the
29 agency and applicant. An employment listing service need not keep
30 records pertaining to the kind of position accepted by applicant and
31 probable duration of employment.

32 An employment directory shall keep records of all services rendered
33 to applicants. These records shall contain: The name and address of
34 the applicant; amount of the employment directory's fee; dates and
35 amounts of refund if any, and reason for the refund; the contract
36 agreed to between the employment directory and applicant; and the dates
37 of contact with employers made pursuant to RCW 19.31.190(11).

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

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

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

13 (1) The name, address, and telephone number of the employment
14 agency;

15 (2) Trade name if any;

16 (3) The date of the contract;

17 (4) The name of the applicant;

18 (5) The amount of the fee to be charged the applicant, or the
19 method of computation of the fee, and the time and method of payments:
20 PROVIDED, HOWEVER, That if the provisions of the contract come within
21 the definition of a "retail installment transaction", as defined in RCW
22 63.14.010, the contract shall conform to the requirements of chapter
23 63.14 RCW, as now or hereafter amended;

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

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

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

35 "This is a contract. You understand [the employment listing
36 service] provides information on bona fide job listings but does not
37 guarantee you will be offered a job. You also understand you are
38 liable for the payment of the fee when you receive the list or

1 referral. Do not sign this contract before you read it or if any
2 spaces intended for the agreed terms are left blank. You must be given
3 a copy of this contract at the time you sign it."

4 The notice for an employment directory shall read as follows if the
5 directory is sold in person:

6 "This is a contract. You understand [the employment directory]
7 provides information on possible employers along with general
8 employment, industry, and geographical information to assist you, but
9 does not list actual job openings or guarantee you will obtain
10 employment through its services. You also understand you are liable
11 for the payment of the fee when you receive the directory. Do not sign
12 this contract before you read it or if any spaces intended for the
13 agreed terms are left blank. You must be given a copy of this contract
14 at the time you sign it."

15 A verbal notice for an employment directory shall be as follows
16 before accepting a fee if the directory is sold over the telephone:

17 "You understand [the employment directory] provides information on
18 possible employers along with general employment, industry, and
19 geographical information to assist you, but does not list actual job
20 openings or guarantee you will obtain employment through its services.
21 You also understand you are liable for the payment of the fee when you
22 order the directory."

23 A copy of the contract must be sent to all applicants ordering by
24 telephone and must specify the following information:

25 (a) Name, address, and phone number of employment directory;

26 (b) Name, address, and phone number of applicant;

27 (c) Date of order;

28 (d) Date verbal notice was read to applicant along with a printed
29 statement to read as follows:

30 "On [date verbal notice was read] and prior to placing this order
31 the following statement was read to you: "You understand [the
32 employment directory] provides information on possible employers along
33 with general employment, industry, and geographical information to
34 assist you, but does not list actual job openings or guarantee you will
35 be offered a job. You also understand you are liable for the payment
36 of the fee when you order the directory."; and

37 (e) Signature of employment directory representative.

1 **Sec. 4.** RCW 19.31.100 and 1982 c 227 s 14 are each amended to read
2 as follows:

3 (1) Every applicant for an employment agency's license or a renewal
4 thereof shall file with the director a written application stating the
5 name and address of the applicant; the street and number of the
6 building in which the business of the employment agency is to be
7 conducted; the name of the person who is to have the general management
8 of the office; the name under which the business of the office is to be
9 carried on; whether or not the applicant is pecuniarily interested in
10 the business to be carried on under the license; shall be signed by the
11 applicant and sworn to before a notary public; and shall identify
12 anyone holding over twenty percent interest in the agency. If the
13 applicant is a corporation, the application shall state the names and
14 addresses of the officers and directors of the corporation, and shall
15 be signed and sworn to by the president and secretary thereof. If the
16 applicant is a partnership, the application shall also state the names
17 and addresses of all partners therein, and shall be signed and sworn to
18 by all of them. The application shall also state whether or not the
19 applicant is, at the time of making the application, or has at any
20 previous time been engaged in or interested in or employed by anyone
21 engaged in the business of an employment agency.

22 (2) The application shall require a certification that no officer
23 or holder of more than twenty percent interest in the business has been
24 convicted of a felony within ten years of the application which
25 directly relates to the business for which the license is sought, or
26 had any judgment entered against such person in any civil action
27 involving fraud, misrepresentation, or conversion.

28 (3) All applications for employment agency licenses shall be
29 accompanied by a copy of the form of contract and fee schedule to be
30 used between the employment agency and the applicant.

31 (4) No license to operate an employment agency in this state shall
32 be issued, transferred, renewed, or remain in effect, unless the person
33 who has or is to have the general management of the office has
34 qualified pursuant to this section. The director may, for good cause
35 shown, waive the requirement imposed by this section for a period not
36 to exceed one hundred and twenty days. Persons who have been
37 previously licensed or who have operated to the satisfaction of the
38 director for at least one year prior to September 21, 1977 as a general
39 manager shall be entitled to operate for up to one year from such date

1 before being required to qualify under this section. In order to
2 qualify, such person shall, through testing procedures developed by the
3 director, show that such person has a knowledge of this law, pertinent
4 labor laws, and laws against discrimination in employment in this state
5 and of the United States. Said examination shall be given at least
6 once each quarter and a fee for such examination shall be established
7 by the director. Nothing in this chapter shall be construed to
8 preclude any one natural person from being designated as the person who
9 is to have the general management of up to three offices operated by
10 any one licensee.

11 While employment directories may at the director's discretion be
12 required to show that the person has a knowledge of this chapter,
13 employment directories are exempt from testing on pertinent labor laws,
14 and laws against discrimination in employment in this state and of the
15 United States.

16 (5) Employment directories shall register with the department and
17 meet all applicable requirements of this chapter but shall not be
18 required to be licensed by the department or pay a licensing fee.

19 **Sec. 5.** RCW 19.31.150 and 1969 ex.s. c 228 s 15 are each amended
20 to read as follows:

21 (1) Except as otherwise provided in subsections (2) and (3) of this
22 section, no employment agency shall charge or accept a fee or other
23 consideration from an applicant without complying with the terms of a
24 written contract as specified in RCW 19.31.040, and then only after
25 such agency has been responsible for referring such job applicant to an
26 employer or such employer to a job applicant and where as a result
27 thereof such job applicant has been employed by such employer.

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

30 (3) An employment directory may charge or accept a fee when it
31 provides the applicant with the directory.

32 **Sec. 6.** RCW 19.31.170 and 1977 ex.s. c 51 s 7 are each amended to
33 read as follows:

34 (1) If an applicant accepts employment by agreement with an
35 employer and thereafter never reports for work, the gross fee charged
36 to the applicant shall not exceed: (a) Ten percent of what the first
37 month's gross salary or wages would be, if known; or (b) ten percent of

1 the first month's drawing account. If the employment was to have been
2 on a commission basis without any drawing account, then no fee may be
3 charged in the event that the applicant never reports for work.

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

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

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

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

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

29 (7) Subsections (1) through (6) of this section do not apply to
30 employment listing services or employment directories.

31 **Sec. 7.** RCW 19.31.190 and 1977 ex.s. c 51 s 8 are each amended to
32 read as follows:

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

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

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

4 (3) No licensee or agent of the licensee shall solicit, persuade,
5 or induce an employee to leave any employment in which the licensee or
6 agent of the licensee has placed the employee; nor shall any licensee
7 or agent of the licensee persuade or induce or solicit any employer to
8 discharge any employee;

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

14 (5) An employment directory shall include the following on all
15 advertisements:

16 "Directory provides information on possible employers and general
17 employment information but does not list actual job openings.";

18 (6) 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)~~) (7) No licensee or agent of a licensee shall directly or
23 indirectly 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)~~) (8) When an applicant is referred to the same employer by
28 two licensees, the fee shall be paid to the licensee who first
29 contacted the applicant concerning the position for that applicant:
30 PROVIDED, That the licensee has given the name of the employer to the
31 applicant and has within five working days arranged an interview with
32 the employer and the applicant was hired as the result of that
33 interview;

34 (~~(8)~~) (9) No licensee shall require in any manner that a
35 potential employee or an employee of an employer make any contract with
36 any lending agency for the purpose of fulfilling a financial obligation
37 to the licensee;

1 ~~((9))~~ (10) All job listings must be bona fide job listings. To
2 qualify as a bona fide job listing the following conditions must be
3 met:

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

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

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

14 (11) All listings for employers listed in employment directories
15 shall be current. To qualify as a current employer, the employment
16 directory must contact the employer at least once per month and verify
17 that the employer is currently hiring;

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

22 **Sec. 8.** RCW 19.31.245 and 1990 c 70 s 2 are each amended to read
23 as follows:

24 (1) No employment agency may bring or maintain a cause of action in
25 any court of this state for compensation for, or seeking equitable
26 relief in regard to, services rendered employers and applicants, unless
27 such agency shall allege and prove that at the time of rendering the
28 services in question, or making the contract therefor, it was
29 registered with the department or the holder of a valid license issued
30 under this chapter.

31 (2) Any person who shall give consideration of any kind to any
32 employment agency for the performance of employment services in this
33 state when said employment agency shall not be registered with the
34 department or be the holder of a valid license issued under this
35 chapter shall have a cause of action against the employment agency.
36 Any court having jurisdiction may enter judgment therein for treble the
37 amount of such consideration so paid, plus reasonable attorney's fees
38 and costs.

1 (3) A person performing the services of an employment agency
2 ~~((or))~~, employment listing ~~((or employment referral))~~ service, or
3 employment directory without being registered with the department or
4 holding a valid license shall cease operations or immediately apply for
5 ~~((and obtain))~~ a valid license or register with the department. If the
6 person continues to operate in violation of this chapter the director
7 or the attorney general has a cause of action in any court having
8 jurisdiction for the return of any consideration paid by any person to
9 the agency. The court may enter judgment in the action for treble the
10 amount of the consideration so paid, plus reasonable attorney's fees
11 and costs.

Passed the House April 20, 1993.

Passed the Senate April 15, 1993.

Approved by the Governor May 18, 1993.

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