

## The Commonwealth of Massachusetts

PRESENTED BY:

*Linda Dorcena Forry and*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

# An Act Updating and Streamlining the Employment Agency Law.

**PETITION OF:**

NAME:	DISTRICT/ADDRESS:
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>William M. Straus</i>	<i>10th Bristol</i>
<i>William C. Galvin</i>	<i>6th Norfolk</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Mark C. Montigny</i>	<i>Second Bristol and Plymouth</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Theodore C. Speliotis</i>	<i>13th Essex</i>
<i>Katherine M. Clark</i>	<i>Middlesex and Essex</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>David M. Nangle</i>	<i>17th Middlesex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>
<i>Brian Ashe</i>	<i>2nd Hampden</i>
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>

<i>Jason M. Lewis</i>	<i>31st Middlesex</i>
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol, and Plymouth</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Denise Garlick</i>	<i>13th Norfolk</i>
<i>Kevin G. Honan</i>	<i>17th Suffolk</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>
<i>Anthony W. Petruccelli</i>	<i>First Suffolk and Middlesex</i>
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Susan C. Fargo</i>	<i>Third Middlesex</i>
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>
<i>John P. Fresolo</i>	<i>16th Worcester</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>
<i>Lori A. Ehrlich</i>	<i>8th Essex</i>
<i>Kevin J. Murphy</i>	<i>18th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>Steven A. Tolman</i>	<i>Second Suffolk and Middlesex</i>
<i>Jeffrey Sánchez</i>	<i>15th Suffolk</i>
<i>Gloria L. Fox</i>	<i>7th Suffolk</i>
<i>Steven M. Walsh</i>	<i>11th Essex</i>
<i>Eugene L. O'Flaherty</i>	<i>2nd Suffolk</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>
<i>Kenneth J. Donnelly</i>	<i>Fourth Middlesex</i>
<i>Carlos Henriquez</i>	<i>5th Suffolk</i>
<i>Paul Mark</i>	<i>2nd Berkshire</i>
<i>Stephen R. Canessa</i>	<i>12th Bristol</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Timothy J. Toomey, Jr.</i>	<i>26th Middlesex</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Ann-Margaret Ferrante</i>	<i>5th Essex</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Marc R. Pacheco</i>	<i>First Plymouth and Bristol</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Paul Brodeur</i>	<i>32nd Middlesex</i>

<i>John J. Binienda</i>	<i>17th Worcester</i>
<i>Michael D. Brady</i>	<i>9th Plymouth</i>
<i>Aaron Michlewitz</i>	<i>3rd Suffolk</i>
<i>Sean Curran</i>	<i>9th Hampden</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>
<i>Christopher N. Speranzo</i>	<i>3rd Berkshire</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Christine E. Canavan</i>	<i>10th Plymouth</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Thomas M. McGee</i>	<i>Third Essex and Middlesex</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Karen E. Spilka</i>	<i>Second Middlesex and Norfolk</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Robert F. Fennell</i>	<i>10th Essex</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>
<i>Stephen Stat Smith</i>	<i>28th Middlesex</i>
<i>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Russell Holmes</i>	<i>6th Suffolk</i>
<i>Martin J. Walsh</i>	<i>13th Suffolk</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Kevin Aguiar</i>	<i>7th Bristol</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>

By Ms. Linda Dorcena Forry of Boston, petition (accompanied by bill, House, No. 01393) of Ellen Story and others for legislation to establish a "right to know" policy for certain temporary employees. Joint Committee on Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION]

SEE

**HOUSE**  
 , NO. 1797 OF 2009-2010.]

## The Commonwealth of Massachusetts

## **In the Year Two Thousand Eleven**

# An Act Updating and Streamlining the Employment Agency Law.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

- 1 SECTION 1. Chapter 140 of the of the General Laws, as appearing in the 2008 Official Edition,
- 2 is hereby amended by striking out sections 46A through 46R, inclusive, and inserting in place
- 3 thereof the following sections:-
- 4 Section 46A. As used in this section and in sections 46B to 46M, inclusive, the following words
- 5 shall have the following meanings:
- 6 “Applicant”, any applicant for employment, work, assignment or engagement, without regard to
- 7 whether the applicant, when placed, is paid by the employment agency or another employer, or is
- 8 an independent contractor. In the case of an applicant who is paid by an employment agency, for

9 purposes of this chapter, the applicant shall continue to be considered an applicant while the  
10 applicant is employed or paid by the employment agency.

11 “Applicant fee”, any money or other valuable consideration paid or promised to be paid by a job  
12 applicant, employee, or worker, or a prospective job applicant, employee, or worker, to an  
13 employment agency for any goods or services rendered.

14 “Application”, a form prescribed by the commissioner to be completed by any person required to  
15 possess an employment agency registration.

16 “Assignment”, any placement, job or task to which an applicant, employee or worker has been  
17 directed or referred by an employment agency.

18 “Client,” any person or business that utilizes the services of an employment agency by accepting  
19 the assignment, placement, recruitment, referral, engagement, or employment of workers or  
20 applicants provided by an employment agency to perform work for said client.

21 “Client fee”, any money or other valuable consideration paid or promised to be paid by a client  
22 to an employment agency for goods or services rendered.

23 “Commissioner”, the commissioner of the division.

24 “Division”, the division of occupational safety.

25 “Emigrant agent”, any person who, on behalf of an employment agency and for a fee, procures  
26 or attempts to procure employment, work, assignment or engagement in the commonwealth for  
27 persons outside the commonwealth seeking such employment, work, assignment or engagement,  
28 or, applicants, employees or workers from outside the commonwealth for employers in the  
29 commonwealth seeking the services of such applicants, employees or workers.

30 “Employee”, any individual in the service of another under any contract of hire, express or implied, oral or written.

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32 “Employment”, service, including service in interstate commerce, performed for wages or under any contract, oral or written, express or implied, by an employee for the employee’s employer.

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34 “Employment agency”, any person who conducts in whole or in part a business for the purpose of procuring or attempting to procure permanent or temporary help, employment, work, assignment or engagement, or for the registration of such persons seeking permanent or temporary help, employment, work, assignment or engagement, or for giving information as to where and of whom such help, employment, work, assignment or engagement may be procured, where a fee is exacted or attempted to be collected for such service, regardless of whether the fee is a client fee or an applicant fee. For the purposes of this chapter, “employment agency” shall include “staffing agency” as defined by section 159C of chapter 149.

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42 “Engagement”, a period of employment as defined herein, or work that lasts for a limited period of time, including, but not limited to, modeling engagements.

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44 “Fee”, (a) any money or other valuable consideration paid or promised to be paid either by an applicant, employee, worker or a client, for goods or services rendered or to be rendered by any person conducting an employment agency under this chapter;

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47 (b) the difference between the amount of money received by any person who furnishes applicants, employee or workers and the amount paid by the employment agency to such applicant, employee or worker.

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50 “Help”, any individual in the service of another person or entity for wages or other  
51 compensation, regardless of whether the individual is an employee of that person or entity, or  
52 whether the individual’s wages or other compensation are paid by an employment agency, a  
53 client, or any other third party.

54 “Job order”, information provided by an employment agency to an applicant, employee or  
55 worker that details the specifics of the employment, work, assignment or engagement to which  
56 an agency is referring, assigning, or providing information to an applicant, employee or worker.

57 “Person”, any individual, company, sole proprietorship, limited partnership, joint venture,  
58 society, association, corporation, manager, contractor, subcontractor, or their agency or  
59 employees but shall not include any labor organization as defined in section 2 of chapter 150A;  
60 nor any agency operated by a religious, charitable, or nonprofit organization or accredited  
61 educational institution; nor any agency operated by the federal, state or municipal governments;  
62 nor any person validly licensed pursuant to section 180C; however, the provisions of section 46J  
63 shall apply to such person.

64 “Professional employee”, an employee as defined by section 1 of chapter 150E of the General  
65 Laws.

66 “Registrant”, a person who has been issued an employment agency registration.

67 “Registration”, a certificate issued by the commissioner that signifies that an employment agency  
68 owner has filed a complete application with the division to conduct the activities of an  
69 employment agency as defined in this section and has met the requirements of sections 46B to  
70 46F, inclusive.

71 “Work”, physical or mental effort or activity directed toward the production or accomplishment  
72 of something; a job, trade, profession or employment.

73 “Worker”, any individual hired, referred, recommended, placed or sent to perform work,  
74 regardless of whether the individual is an employee or an independent contractor.

75 “Work order”, written record of request or authorization for services by a client to an  
76 employment agency providing specific information about the services requested or authorized.

77 Section 46B. Notwithstanding the other provisions of this chapter, no person shall open, keep,  
78 maintain, conduct, or advertise any employment agency unless the person has been issued a  
79 registration therefor under section 46D from the commissioner. Such registration shall be posted  
80 in a conspicuous place in each employment agency conducted by such person.

81 Section 46C. Any person shall, before opening, keeping, establishing, maintaining, conducting  
82 or advertising an employment agency, first make an application for such registration to the  
83 commissioner. Such application shall be made by the owner or owners of the employment  
84 agency, and if the agency is owned by a corporation, such application shall be made by the  
85 president and treasurer thereof. Each application shall be in a form prescribed by the  
86 commissioner and shall contain, at minimum, the name and address of the registration applicant;  
87 the street and number of the building or place where the business is to be conducted; any other  
88 businesses owned or operated by the registration applicant; the name of the individual who will  
89 direct and operate the placement activities of the employment agency, whether such individual is  
90 the registration applicant or another; the types of jobs, work, assignments or engagements to  
91 which the employment agency will refer or assign applicants, employees or workers; a non-  
92 refundable application fee; a copy of a government-issued photo identification; an affirmation of

93 compliance with the requirement to post or distribute the Massachusetts Minimum Wage and  
94 Hour poster pursuant to 453 CMR 1.00, §2.06(1) and certification that the person is in  
95 compliance with section 49A(a) of chapter 62C; section 188(d) of chapter 149, ; section 14G(e)  
96 of chapter 151A; , section 19A(a) of chapter 151A, and section 25C(6) of chapter 152. The  
97 commissioner shall not issue a registration to any registration applicant that the commissioner  
98 finds to be in violation of the provisions of the General Laws for which certification of  
99 compliance is required and may revoke the registration of any employment agency the  
100 commissioner subsequently learns has falsely made such certification. The employment agency  
101 may make another application for registration at such time that it can make the required  
102 certifications.

103 Section 46D. (a) The commissioner may examine or cause to be examined the place in which  
104 the registration applicant proposes to conduct an employment agency. Any and all forms and  
105 contracts to be used, and any fees to be charged by the agency shall be available for review by  
106 the commissioner or any duly authorized agent or inspector designated by the commissioner. No  
107 registration shall be issued by the commissioner if the place in which the business of the  
108 employment agency is to be conducted is in a room used for living purposes, including a room  
109 where people sleep or a room where meals are prepared. Home offices are acceptable, provided  
110 that there is a dedicated area for the business of the employment agency to be conducted and a  
111 secure location for the storage of files. Interviews and in-person interactions with applicants,  
112 employees or workers are not allowed in home offices unless there is a separate entrance/egress  
113 from the main living area of the residence.

114 (b) Each completed application shall be granted or denied within 60 business days from  
115 the date of its filing. Any registration issued hereunder shall be in effect until 1 year following  
116 the date of issuance.

117 Section 46E. A registration issued under section 46D shall not be assigned or transferred without  
118 notification to the commissioner within 30 calendar days of the effective date of the assignment  
119 or transfer. Any change in location or name shall be endorsed upon the registration certificate.  
120 More than 1 such registration may be issued to the same person. If a registrant or registration  
121 applicant desires to establish or keep an employment agency at more than 1 location, he must  
122 apply for a registration for each location at which he intends to conduct said employment agency.  
123 If a registrant or registration applicant desires to establish or keep an employment agency using  
124 more than 1 name, the registrant or registration applicant must apply for a registration for each  
125 name under which the registrant or registration applicant intends to conduct said employment  
126 agency. Each name and each location being advertised, operated or maintained by an  
127 employment agency must be registered separately.

128 Section 46F. Each registrant shall maintain a record-keeping system which contains the name  
129 and contact information of each applicant, employee or worker and client with whom the agency  
130 has a business relationship; any work orders or job orders; records of applicant fees and client  
131 fees charged and received; receipts for any applicant fees received or charged; records of receipts  
132 and income received by the employment agency from the operation of its business; records of  
133 wages or other compensation paid to or made on behalf of applicants, employees or workers, by  
134 the registrant and any deductions taken from wages or compensation, including but not limited to  
135 any and all state and federal taxes, insurance premiums, or any fees charged; and any records

136 required to be kept pursuant to sections 46G and 46H. Said records and receipts shall be  
137 maintained for a period of at least 3 years

138 Section 46G. Each employment agency shall furnish in writing to each applicant, employee or  
139 worker, for each new assignment or engagement:

140 (a) a job order containing the following:

141 (1) a multi-lingual notice provided by the division that the job order contains important  
142 information concerning the employment, work, assignment, or engagement, and that the  
143 applicant, employee or worker should have the form translated.

144 (2) the name of the employment agency and the address of the agency's principal location;

145 (3) disclosure of the employment relationship between the agency and the applicant,  
146 employee or worker;

147 (4) the name address and telephone number of the person for whom the applicant, employee  
148 or worker is to apply or report to for such employment, work, assignment, or engagement;

149 (5) the name of the worksite employer and the worksite address for the applicant's,  
150 employee's or worker's assignment;

151 (6) the kind and character of the employment, including any requirement for special attire,  
152 accessories, tools, safety or health equipment, training or licenses and any costs charged to the  
153 applicant, employee or worker allowed by law;

154 (7) the safety or protective equipment, uniforms and other items provided by the employer,  
155 including personal protective equipment that will be provided at no charge by the employment  
156 agency or worksite employer;

157 (8) whether the employee will receive special training for the particular job tasks as required  
158 by law;

159 (9) the rate of wages or compensation including any benefits to be paid for the work to be  
160 performed by the worker;

161 (10) where known, the expected duration of the employment, work, assignment, or  
162 engagement, including daily starting time, anticipated end time, and anticipated overtime, if any;

163 (11) any meal(s) to be provided by the agency or the worksite employer and the cost of such  
164 meal(s) as allowed by law, if any;

165 (12) the fee(s) to be exacted by the agency from the applicant, employee or worker, if any;

166 (13) and details of the transportation required or offered to the applicant, employee or worker  
167 by the agency or client or any person acting on behalf of the agency or client, and the cost of  
168 such transportation as allowed by law, if any;

169 provided that nothing in this paragraph shall be construed to prohibit an employment agency  
170 from directing an applicant, employee, or worker to employment, work, assignment or  
171 engagement by telephone, but such telephone message shall comply with the disclosure  
172 requirements of this paragraph and shall be confirmed in writing by the employment agency and  
173 sent to the applicant, employee or worker within 72 hours of the start of the employment, work,  
174 assignment, or engagement; a copy of such confirmation shall be kept by the employment

175 agency for a period of at least 3 years; provided further that the provisions of this paragraph shall  
176 not apply to any activities of an employment agency where an applicant, employee or worker is  
177 recruited, applying for or seeking information about any employment, work, assignment or  
178 engagement for a professional employee in professional, scientific, or technological services as  
179 classified in the North American Industry Classification System (NAICS) code 54;

180 (b) the name, address and telephone number of the division;

181 (c) a statement of the worker's right to workers' compensation benefits and the employer's  
182 workers' compensation carrier name and number;

183 (d) a copy of every contract executed between the employment agency and an applicant,  
184 employee or worker;

185 (e) a receipt for every applicant fee charged or accepted by the employment agency and which  
186 the applicant, employee or worker has paid.

187 The original or duplicate copy of each contract, receipt for applicant fees and record that the  
188 information as prescribed in this section was provided shall be retained by the employment  
189 agency for at least 3 years following the date on which the contract is executed, the payment is  
190 made, or the information is furnished, whichever is later, and shall be made available for  
191 inspection by the commissioner or the commissioner's duly authorized agent or inspector, upon  
192 his request. The commissioner may, at the commissioner's discretion, provide a sample notice  
193 that shall meet the notification requirements of this section.

194 Section 46H. (a) No employment agency shall bring into the commonwealth from outside the  
195 commonwealth any applicant, employee or worker unless the agency has first given the

196 applicant, employee or worker a written statement containing all of the information contained  
197 within section 46G. A copy of such statement shall be retained by the employment agency for 3  
198 years from the date of issuance.

199 (b) Each employment agency which directly or indirectly engages or uses the services of an  
200 emigrant agent, shall maintain records containing the name and contact information of all  
201 emigrant agents from whom it accepts job applicants, employees or workers. If such emigrant  
202 agents are required to be licensed in the places in which they recruit applicants, employees or  
203 workers, no employment agency shall accept applicants, employees or workers from other than  
204 duly licensed emigrant agents.

205 (c) Each employment agency which is responsible for providing transportation to an applicant,  
206 employee or worker shall do so in accordance with section 159C of chapter 149.

207 (d) Each employment agency which has transported into the commonwealth an applicant,  
208 employee or worker from outside the commonwealth where the applicant, employee or worker  
209 does not permanently reside in a state that is contiguous to the commonwealth shall provide at its  
210 own expense suitable lodging and meals for any applicant, employee or worker who is not placed  
211 in employment, work, assignment or engagement on the day the applicant, employee or worker  
212 arrives at the location of the employment agency or at the location of the employment, work,  
213 assignment or engagement to which the applicant, employee or worker was placed, assigned or  
214 referred, from the time the applicant, employee or worker reports at such location until the  
215 applicant, employee or worker is placed, or is returned to the place from which the applicant,  
216 employee or worker was recruited, or is given the option of returning to such place as hereinafter  
217 provided.

218 (e) Each employment agency which has transported into the commonwealth an applicant,  
219 employee or worker from outside the commonwealth where the applicant, employee or worker  
220 does not permanently reside in a state that is contiguous to the commonwealth shall provide  
221 reasonable allowance for 1 day's meals and the return fare or actual transportation to any such  
222 applicant, employee or worker who was not placed in employment, work, assignment or  
223 engagement, or whose employment, work, assignment or engagement terminated due to lack of  
224 work within 72 hours thereafter, and who is without employment, work, assignment or  
225 engagement and desires to return to the place from which the applicant, employee or worker was  
226 recruited.

227 (f) The provisions of sections 46H(d) and 46H(e) shall not apply to any activities of an  
228 employment agency where an applicant, employee or worker is recruited, applying for or seeking  
229 information about any employment, work, assignment or engagement for a professional  
230 employee in professional, scientific, or technological services as classified in the North  
231 American Industry Classification System (NAICS) code 54.

232 Section 46I. In addition to the other requirements of this chapter, an employment agency shall  
233 not engage in any of the following activities or conduct:

234 (a) Knowingly issue, distribute, circulate or provide or cause to be issued, circulated,  
235 distributed or provided, any false, fraudulent or misleading information, representation, promise,  
236 notice or advertisement to any applicant, employee or worker.

237 (b) Use any name that has not been registered with the division in the advertisement of its  
238 services.

239 (c) Assign, place or refer or cause to be assigned, placed or referred an applicant, employee  
240 or worker to a client without a bona fide work order.

241 (d) Assign, place or refer or cause to be assigned, placed or referred, any applicant, employee  
242 or worker to any employment, work, assignment or engagement where the employment agency  
243 knows, or reasonably should know, that the prospective employment, work, assignment or  
244 engagement is or would be in violation of state or federal laws governing minimum wages, child  
245 labor, compulsory school attendance or required licensure or certification.

246 (e) Assign, place or refer or cause to be assigned, placed or referred an applicant, employee  
247 or worker to any place in which the employment agency knows or reasonably should know is  
248 maintained for illegal purposes.

249 (f) Assign, place or refer or cause to be assigned, placed or referred any applicant, employee  
250 or worker to any employment, work, assignment or engagement by force.

251 (g) Require any applicant, employee or worker to purchase any good or service offered by an  
252 employment agency or by any third party which will inure to the financial benefit of the  
253 employment agency.

254 (h) Refuse to return on demand of any applicant, employee or worker, any personal property  
255 belonging to such person.

256 (i) Assign, place or refer or cause to be assigned, placed or referred any applicant, employee  
257 or worker to any place which the employment agency knows or reasonably should have known is  
258 on strike or lockout, without notifying the applicant, employee or worker of this fact in the job  
259 order.

260 (j) Divide or share, or offer to divide or share applicant fees with employment agency  
261 clients.

262 (k) Restrict the right of an employee or worker to accept a permanent position with a client to  
263 whom the employee or worker is referred for work or to restrict the right of a client to offer such  
264 permanent employment to an employee or worker, provided that said restriction shall not apply  
265 to any fee paid by a client to an employment agency to employ a professional employee in  
266 professional, scientific, or technical services as classified in the North American Industry  
267 Classification System (NAICS) code 54.

268 (l) Discharge, or cause to be discharged, reduce the compensation of, or otherwise  
269 discriminate or retaliate against any applicant, employee or worker for making a complaint for a  
270 violation of this chapter, participating in any of its proceedings under this chapter, using any civil  
271 remedies to enforce the applicant's, employee's or worker's rights, or otherwise asserting the  
272 applicant's, employee's or worker's rights under this chapter or chapter 149.

273 Section 46J. (a) An employment agency shall not charge or accept an applicant fee or other  
274 consideration for any good or service unless in accordance with the terms of a written contract  
275 with an applicant, employee or worker.

276 (b) No applicant fee shall be charged or accepted for the registration of applicants, employees or  
277 workers for employment, work, assignment or engagement.

278 (c) An applicant fee for the procurement of employment, work, assignment or engagement shall  
279 only be charged or accepted if the placement, referral or assignment by the employment agency  
280 resulted in employment, work, assignment or engagement for the applicant, employee or worker  
281 from which the applicant, employee or worker receives wages or other consideration. Said

282 applicant fee for the procurement of employment, work, assignment or engagement shall not  
283 exceed the following:

284

285 (1) Where the applicant is an employee of the employment agency and is paid by and placed or  
286 assigned by the employment agency for employment, work, assignment or engagement, no  
287 applicant fee shall be charged for more than 4 weeks per placement and no such applicant fee  
288 shall be charged that would result in the applicant's hourly wages falling below the rates  
289 established by the state or federal minimum wage required by law.

290 (2) For independent contractors under section 148B of chapter 149, the maximum applicant fee  
291 shall not exceed 10 percent of the gross wages received by the independent contractor for any  
292 engagement arranged by the employment agency.

293 (3) For models, the maximum applicant fee shall not exceed 10 percent of the gross wages  
294 received by the model for any engagement arranged by the employment agency.

295 (4) Where the applicant is placed or referred to a client for employment or work by an  
296 employment agency and is hired as an employee of the client and is not an employee of the  
297 employment agency, except any applicant who is hired as a professional employee in  
298 professional, scientific, or technological services as classified in the North American Industry  
299 Classification System (NAICS) code 54, the following shall be the maximum applicant fee to be  
300 charged or accepted in percentage of the first 4 weeks' gross salary or wages received based  
301 upon the wage at which the applicant was hired:

302 (i) If no meals or lodging are provided 10%

303 (ii) If 1 meal per working day is provided 12%

304 (iii) If 2 meals per working day are provided 14%

305 (iv) If 3 meals and lodging per working day are provided 18%

306 (5) Where the applicant is placed or referred to a client for employment or work by an  
307 employment agency and is hired as an employee of the client and is not an employee of the  
308 employment agency, and where the applicant will be paid on a straight commission basis or on  
309 the basis of a drawing account or base wage plus commissions, the total applicant fee shall be  
310 calculated on the percentages in section 46J(C)(4) and applied to an amount equivalent to one-  
311 twelfth of the computed annual earnings as estimated by the employer client.

312 (d) An employment agency shall not require the payment, charge or acceptance of any applicant  
313 fee for any good or service other than an applicant fee for the procurement of employment, work,  
314 assignment or engagement. Any applicant fee charged or accepted shall be in accordance with  
315 the terms of a written contract and said contract shall clearly state that the purchase of said good  
316 or service is voluntary on the part of the applicant, employee or worker.

317 (e) An employment agency, or any person acting in its interest, shall not charge or accept  
318 any applicant fee for transportation that violates the provisions of section 159C of chapter 149.

319 (f) An employment agency shall not charge any applicant fee for any bank card, debit card,  
320 payroll card, voucher, draft, money order or similar form of payment of wages by the  
321 employment agency, for applicants, employees or workers who are compensated for their  
322 employment, work assignment or engagement by an employment agency, that exceeds the actual  
323 cost to the employment agency for providing such service to the applicant, employee or worker;

324 provided, however, that no fee may be charged if it would cause the applicant, employee or  
325 worker to earn less than the applicable minimum wage.

326 (g) An employment agency shall not charge any applicant fee for any criminal offender  
327 record information (CORI) check or drug screen that exceeds the actual cost per applicant,  
328 employee or worker to the employment agency for providing such service.

329 (h) Any employment agency that knowingly refers or assigns any applicant, employee or worker  
330 to any employment, work, assignment or engagement where it is found that no employment,  
331 work, assignment or engagement existed, shall fully refund any applicant fee, along with the  
332 costs of transportation in going to and returning from such location. An employment agency  
333 shall not be responsible to an applicant, employee or worker for any expense incurred by an  
334 applicant, employee or worker in connection with an interview unless the employment agency  
335 has failed to inform the applicant, employee or worker that the purpose of the referral or  
336 assignment is for an interview and will not necessarily result in employment, work, assignment  
337 or engagement.

338 (i) Any applicant fee that is charged or accepted in excess of the amounts allowable  
339 under this section shall be refunded to such applicant, employee or worker on demand.

340 Section 46K. Each employment agency shall post in a conspicuous place in each agency  
341 location, or distribute to each applicant, employee or worker who is placed, assigned, or referred  
342 to an employment, work, assignment or engagement, a copy of sections 46G, 46H, 46I and 46J  
343 of this chapter, in languages in which persons commonly doing business with such employment  
344 agency location can understand. Such poster shall contain the name, address and telephone  
345 number of the commissioner charged with the enforcement of said sections. The commissioner

346 may, at the commissioner's discretion, provide a sample notice that shall meet the notification  
347 requirements of this section.

348 Section 46L. (a) The commissioner, or any duly authorized agent or inspector designated by the  
349 commissioner, shall have authority to inspect and make a record of the premises, records,  
350 contracts, receipts, job application forms, work orders, job orders, referral forms, reference  
351 forms, reference reports, financial and other records of applicant, employee, worker and client  
352 fees charged and refunds made of each employment agency which are essential to the operation  
353 of such employment agency and of each applicant for an employment agency registration. The  
354 premises of an employment agency shall include any place where the business of an employment  
355 agency is conducted, including, but not limited to locations owned, leased or occupied by the  
356 employment agency or where the records of such agency are stored. The commissioner, or any  
357 duly authorized agent or inspector, shall not be denied reasonable access by an employment  
358 agency or client for the purposes of interviewing applicants, employees or workers and others  
359 who are placed, referred, employed, assigned or engaged by any employment agency or client  
360 and shall have the authority to inspect the premises or work locations of a client and conduct  
361 such other investigations that the commissioner deems necessary for the enforcement of this  
362 chapter.

363 (b) Any complaint against any person operating as an employment agency shall be made  
364 to the commissioner. The commissioner shall notify the person of the complaint no later than 5  
365 business days from the receipt of the complaint at the division, by serving upon said person  
366 either personally or by certified mail, at the person's place of residence, or by leaving with the  
367 person in charge of the person's office, a concise statement of the contents of the complaint. The  
368 commissioner shall investigate such complaint and may hold a hearing, take testimony, subpoena

369 witnesses, and direct the production before him or her of necessary records, books, papers,  
370 receipts and other records. If such investigation reveals that a person, business or registered  
371 employment agency is in violation of the provisions of sections 46B to 46L, inclusive, the  
372 commissioner may exercise authority under section 46M.

373 (c) The commissioner may, subject to the provisions of chapter 30A, establish such rules and  
374 regulations as he deems necessary to carry out the provisions of sections 46B to 46N, inclusive.

375 Section 46M. (a) Whoever violates any provision of sections 46B, 46C, 46E, 46F, 46G, 46H,  
376 46I, 46J, 46K or 46L, shall be punished by a fine of not more than \$500, or by imprisonment in  
377 the house of correction for not more than 1 year, or both. The commissioner may institute  
378 proceedings based upon any such violation. Each violation of said sections shall constitute a  
379 separate offense. Criminal prosecution for any such violation shall not preclude any person from  
380 recovering money unlawfully collected, in a civil action. In addition to the penalties provided  
381 for in this paragraph, the commissioner may issue a written warning or a civil citation for  
382 violations of these sections. Subsections (c) to (i), inclusive, of section 6F½ of chapter 149 shall  
383 apply to these citations. The commissioner may adopt regulations for the issuance of the written  
384 warnings and citations and for the enforcement thereof.

385 (b) Any employee or worker claiming to be aggrieved by a violation of any provision of  
386 sections 46G, 46H, 46I, 46J, 46K or 46L by an employment agency or client may, within 3 years  
387 after the violation, institute and prosecute in his own name and on his own behalf, or for himself  
388 and for others similarly situated, a civil action for injunctive relief, for any damages incurred,  
389 and for any lost wages and other benefits. An employee or worker so aggrieved who prevails in

390 such an action shall be awarded treble damages, as liquidated damages, for any lost wages and  
391 other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees.

392 (c) Information secured pursuant to sections 46A to 46L, with the exception of information  
393 provided to an applicant, employee or worker pursuant to section 46G, shall be confidential and  
394 for the exclusive use and information of the commissioner in the discharge of the duties  
395 hereunder. Whoever, except with the authority of the commissioner or pursuant to rules or  
396 regulations, or as otherwise required or authorized by law, shall disclose the same, shall be  
397 punished by a fine of not more than \$100 or by imprisonment for not more than 6 months, or  
398 both; provided, that nothing herein shall be construed to prevent the commissioner from  
399 conducting any investigation or hearing as provided for in said sections, and provided further,  
400 that nothing herein shall prevent the division from making available to the public, lists of  
401 registered employment agency names and locations and information about penalties assessed in  
402 accordance with section 46M and subsections (c) to (i), inclusive, of section 6F½ of chapter 149.