

1 **SENATE FLOOR VERSION**

2 April 6, 2017

3 ENGROSSED HOUSE
4 BILL NO. 1233

By: Osburn (Mike) of the House

5 and

6 Pugh of the Senate

7
8 An Act relating to labor; amending 40 O.S. 2011,
9 Sections 46, 52, 54, 55 and 57, which relate to
10 private employment agencies; authorizing courts to
11 issue certain order regarding employment agents;
12 deleting penalty; modifying definitions; modifying
13 fees; authorizing certain records be open to
14 inspections; clarifying enforcement of rules and
15 regulations; repealing 40 O.S. 2011, Sections 35, 38
16 and 53, which relate to private employment agencies;
17 and providing an effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 40 O.S. 2011, Section 46, is
20 amended to read as follows:

21 Section 46. ~~The Commissioner of Labor shall~~ Any court of
22 competent jurisdiction, after having determined ~~by investigation~~
23 that any employer in this state is not fulfilling contracts made
24 through employment agents, may order all employment agents in the
state to refuse further service to such employer. ~~Any employment~~
~~agent violating this section shall be subject to the penalties as~~
~~provided in Section Two (2) and Twelve (12) of this act.~~

1 SECTION 2. AMENDATORY 40 O.S. 2011, Section 52, is
2 amended to read as follows:

3 Section 52. For the purpose of and when used in this act:

4 (a) ~~The "Administrator" of this act shall be the Commissioner~~
5 ~~of Labor.~~

6 ~~(b) "Director" shall mean the Deputy appointed by the~~
7 ~~Administrator to supervise administration of this act.~~

8 ~~(c) "Employee", as used in this act, shall mean any person~~
9 ~~performing or applying for work or service of any kind or character~~
10 ~~for hire.~~

11 ~~(d) (b) "Employer" shall mean any person employing or seeking~~
12 ~~to employ any person for hire.~~

13 ~~(e) (c) "Fees" shall mean anything of value, including any~~
14 ~~money or other valuable consideration exacted, charged, collected or~~
15 ~~received directly or indirectly, or paid or promised to be paid for~~
16 ~~any services or act described or enumerated in subsection ~~(g)~~ (e) of~~
17 ~~this section.~~

18 ~~(f) (d) "Employment" shall mean the act of employing or state~~
19 ~~of being employed, engaged, or hired.~~

20 ~~(g) (e) "Private employment agency" shall mean any business~~
21 ~~operated in this state by any person, firm or corporation for profit~~
22 ~~which secures employment or by any form of advertising holds itself~~
23 ~~out to applicants as able to secure employment or to provide~~
24 ~~information or service of any kind purporting to promote, lead to or~~

1 result in employment for the applicant with any employer other than
2 itself, where any applicant may become liable for the payment of a
3 fee to the private employment agency, either directly or indirectly.

4 "Private employment agency" does not include:

5 (1) Any educational, religious, charitable, fraternal or
6 benevolent organization which charges no fee for
7 services rendered in securing employment or providing
8 information about employment; or

9 (2) Any employment service operated by this state, the
10 Government of the United States, or any city, county,
11 or town, or any agency thereof; or

12 (3) Any temporary help service that at no time advertises
13 or represents that its employee, with the approval of
14 the temporary help service, may be employed by one of
15 its client companies on a permanent basis; or

16 (4) Any newspaper of general circulation or other business
17 engaged primarily in communicating information that
18 does not purport to adapt the information provided to
19 the needs or desires of an individual subscriber; or

20 (5) Employment offices that charge no fee to the applicant
21 other than union dues or to the employer and which are
22 used solely for the hiring of employees under a valid
23 union contract by the employer subscribing to this
24 contract; or

1 (6) Any organization that charges fees only for services
2 other than securing employment, 7; provided that such
3 services are performed pursuant to a contract which
4 includes a statement, in a type size no smaller than
5 ten point, directly above the place for the signature
6 of the client that reads as follows: "I have read and
7 received a copy of this contract which I understand
8 makes me legally obligated to pay a fee, I further
9 understand that this contract does not guarantee
10 employment"; or

11 (7) Resume services whose service includes only the
12 preparation and production of resumes, and does not
13 purport to offer services that will result in
14 employment; or

15 (8) A person employing individuals to render part-time or
16 temporary personal services to, for, or under the
17 direction of a third person, if the person employing
18 the individuals, in addition to wages or salaries,
19 pays federal social security taxes, state and federal
20 unemployment insurance, carries workers' compensation
21 insurance as required by state law, and has
22 responsibility for the acts of his employees while
23 rendering services to or under the direction of a
24 third person.

1 ~~(h)~~ (f) "Temporary employment" shall mean any period of
2 employment terminating at any time within sixty (60) days from date
3 of employment.

4 ~~(i)~~ (g) "Permanent employment" shall mean all employment
5 exceeding sixty (60) days duration.

6 ~~(j)~~ (h) "Person" shall mean any individual, copartnership,
7 corporation, or other legal entity.

8 SECTION 3. AMENDATORY 40 O.S. 2011, Section 54, is
9 amended to read as follows:

10 Section 54. (a) The service fee charged for helping to secure
11 permanent employment shall ~~be~~ not ~~to~~ exceed the following schedule:
12 Fifteen percent (15%) of the first full month's gross compensation
13 if the position pays Seventy-nine Dollars and ninety-nine cents
14 (\$79.99) or less; twenty percent (20%) of the first full month's
15 gross compensation if the position pays Eighty Dollars (\$80.00)
16 through One Hundred Nineteen Dollars and ninety-nine cents
17 (\$119.99); thirty percent (30%) of the first full month's gross
18 compensation if the position pays One Hundred Twenty Dollars
19 (\$120.00) through One Hundred Forty-nine Dollars and ninety-nine
20 cents (\$149.99); forty percent (40%) of the first full month's gross
21 compensation if the position pays One Hundred Fifty Dollars
22 (\$150.00) through Two Hundred Seventy-four Dollars and ninety-nine
23 cents (\$274.99); forty-five percent (45%) of the first full month's
24 gross compensation if the position pays Two Hundred Seventy-five

1 Dollars (\$275.00) through Four Hundred Ninety-nine Dollars and
2 ninety-nine cents (\$499.99). For procuring employment paying gross
3 compensation of Five Hundred Dollars (\$500.00) or more per month,
4 the fee shall be determined by written agreement between all parties
5 concerned. The fee schedule shall be posted in a conspicuous place
6 in each employment agency office.

7 (b) In no event shall the fee for temporary employment exceed
8 that for permanent placement. Any period of employment terminating
9 at any time within sixty (60) days from the date of employment shall
10 constitute temporary employment and a fee of not more than twenty
11 percent (20%) of the amount earned shall be charged. All employment
12 exceeding sixty (60) days' duration shall be considered a permanent
13 placement. No licensed employment agency shall collect a fee before
14 an applicant has obtained employment. No fee shall be charged for
15 registering with an employment agency or for instituting a search or
16 investigation, or for other employment-related aids. Where the
17 remuneration is in the form of a straight commission, the first
18 three (3) months' gross earnings shall be divided by three to
19 establish an average monthly compensation against which to compute
20 the fee. No finance company or other purchaser of employment
21 contracts shall be considered a holder in due course of such paper
22 until after the temporary employment period shall have run and
23 permanent employment shall have been established, and in no event
24 shall the applicant for employment be liable for any charge to a

1 finance company in addition to the legal placement fee as
2 hereinabove set forth.

3 (c) This section shall not apply to an employment agency acting
4 as a search consultant that is retained and compensated solely by
5 the employer on a retainer or consulting basis.

6 SECTION 4. AMENDATORY 40 O.S. 2011, Section 55, is
7 amended to read as follows:

8 Section 55. (a) Every employment agency shall enter into a
9 written agreement with every applicant for services to be rendered
10 and the time and method of payment, and on which there shall appear
11 the definition of "Temporary Employment", "Permanent Employment" and
12 "Method of Payment". Provided, that nothing herein shall be
13 construed to prohibit an employment agency from making arrangements
14 by wire or telephone without said employee having first entered into
15 a written agreement with the agency; and provided further, if by
16 oversight or intention an applicant fails to sign an employment
17 contract, but is placed and accepts such employment, the employment
18 agency shall be entitled to its fee for such placement. Every
19 employment agency shall provide the applicant with a copy of any
20 written agreement between the applicant and the agency. All
21 contracts or agreements shall clearly state the fee and in no case
22 shall the employment agency collect more than the stated fee or
23 agreed percentage of the first year's total income.

24

1 (b) In all instances wherein permanent employment is terminated
2 within the definition of temporary employment, every employment
3 agency shall give to every person from whom an overpayment of fee
4 has been received, if requested within six (6) months of such
5 termination, a refund in the amount of such overpayment, such refund
6 to be made promptly within ten (10) days following the agency's
7 receipt of verification from the employer of the inclusive dates of
8 employment and the total gross earnings of the employee. This
9 subsection shall not apply to any employment agency acting as a
10 search consultant that is retained and compensated solely by the
11 employer on a retainer or consulting basis.

12 (c) Every employment agency shall give to every person from
13 whom a payment is received for services or assistance rendered or to
14 be rendered a receipt bearing the name and address of the employment
15 agency, the name of the employee, amount of the payment, date of
16 payment, and for what it is paid. Each such receipt shall be
17 numbered and bound in duplicate form. The duplicate copy shall be
18 kept for two (2) years at the office of the employment agency.

19 (d) A record shall be kept of the name and address of every
20 employee accepting employment, the name and address of the employer
21 with whom employment is accepted, the nature of the employment, the
22 rate of wage or salary to be paid the employee, the amount of the
23 employment agency's service charge, the dates and amounts of
24 payments, the date and amount of refund, if any, and for what,

1 together with a space for remarks under which shall be recorded
2 anything of an individual nature to amplify the foregoing account or
3 record and as information in the event of any question arising
4 concerning the transaction. Such records shall be open to
5 inspection by ~~the Administrator or Director during business hours,~~
6 ~~at the address where the employment agency is conducted,~~ any court
7 of competent jurisdiction for the purpose of enforcing the
8 provisions of this act. ~~The Administrator may also by rules and~~
9 ~~regulations require reports from all agencies giving information on~~
10 ~~job placements, monthly or quarterly, both within and without the~~
11 ~~state, and classified by type of employment, to conform generally~~
12 ~~with employment data gathered and published by the Oklahoma~~
13 ~~Employment Security Commission.~~

14 (e) ~~The Administrator may require of the employment agency~~
15 ~~against whom a written complaint is made, a detailed account in~~
16 ~~writing, under oath, of the transaction referred to in the~~
17 ~~complaint.~~

18 ~~(f)~~ No employment agency shall direct an applicant to
19 employment without having obtained, either orally or in writing,
20 permission or authorization of the employer. No applicant for
21 employment shall be required by any agency to list prospective
22 employers to whom he shall previously have been referred by other
23 agencies.

24

1 ~~(g)~~ (f) No applicant for employment shall knowingly make false
2 or misleading statements to an employment agency regarding age,
3 education, training, experience or references; and no employment
4 agency shall be held responsible for misinformation given it by an
5 applicant and transmitted by it in good faith to an employer.

6 ~~(h)~~ (g) No employment agency shall advertise openings for which
7 it does not hold orders from employers or knowingly cause to be
8 printed, published or circulated misleading, false or fraudulent
9 information about employment opportunities.

10 ~~(i)~~ (h) Other than the prescribed placement fee, no employment
11 agency shall require either the employee or employer to contribute
12 to the cost of its employment-related services, advertising, or
13 incidental expenses. This subsection shall not apply to any
14 employment agency acting as a search consultant that is retained and
15 compensated solely by the employer on a retainer or consulting
16 basis.

17 ~~(j)~~ (i) No employment agency shall place, or cause to be
18 placed, promotional advertising in any media without licensee's
19 identification as to agency and address.

20 ~~(k)~~ (j) No employment agency shall send any person to a
21 prospective employer who is conducting a "lockout" against all or
22 part of his employees, or whose employees or a part of them are out
23 on strike, without first apprising said person of the existence of
24 such lockout or strike.

1 ~~(1)~~ (k) Any licensed agency, or agent thereof, who shall be
2 guilty of dividing fees with any superintendent, manager, foreman or
3 other employees of any person, company, corporation or association
4 for whom employees are furnished, shall be guilty of a misdemeanor
5 and, upon conviction, shall be punished as provided in Section 57 of
6 this title.

7 ~~(m)~~ (l) No licensed agency shall furnish employment to or refer
8 any child to any vocation or establishment in violation of the laws
9 regulating the labor of children or their compulsory attendance at
10 school.

11 ~~(n)~~ (m) No employment agency shall discriminate in the
12 employment of its personnel because of the race, national origin,
13 sex or religious belief of the applicant seeking employment with the
14 agency.

15 SECTION 5. AMENDATORY 40 O.S. 2011, Section 57, is
16 amended to read as follows:

17 Section 57. ~~It shall be the duty of the Administrator and/or~~
18 ~~Director to enforce the provisions of this act. When informed of~~
19 ~~any violation thereof it shall be his duty to investigate same, and~~
20 ~~he~~ Any applicant or employee may institute seek criminal proceedings
21 ~~for~~ enforcement of this act, or apply through request made to any
22 ~~court of competent jurisdiction and/or~~ district attorney or the
23 Attorney General ~~in order to seek injunctive relief on behalf of the~~
24 State of Oklahoma. ~~In order to make more effective the foregoing~~

1 ~~statutory provisions and rules and regulations, the Administrator is~~
2 ~~hereby authorized to prepare and promulgate such rules and~~
3 ~~regulations as may from time to time be deemed necessary, not~~
4 ~~inconsistent with the provisions of this act. A violation of such~~
5 ~~rules and regulations shall be deemed to be a violation of this act,~~
6 ~~and any Any person convicted of violating the provisions of this act~~
7 shall be guilty of a misdemeanor and shall be fined not less than
8 Fifty Dollars (\$50.00), nor more than One Hundred Dollars (\$100.00),
9 or the fee charged for the service, whichever is greater, for each
10 offense, or be imprisoned in the county jail for a period of not
11 exceeding six (6) months, or both such fine and imprisonment, at the
12 discretion of the court.

13 SECTION 6. REPEALER 40 O.S. 2011, Sections 35, 38 and
14 53, are hereby repealed.

15 SECTION 7. This act shall become effective November 1, 2017.

16 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
17 April 6, 2017 - DO PASS
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