

PRIVATE EMPLOYMENT AGENCY LAW

CHAPTER 245⁵⁶

H. B. No. 387

An Act creating a Private Employment Agency Law for Texas; defining Private Employment Agencies; defining certain terms in the Act; defining certain exceptions; providing a method of licensing of Private Employment Agencies and defining said licenses and fee therefor; providing for the posting of bonds; providing for suits on bond; providing a method of record keeping to be promulgated by the Commissioner of the Bureau of Labor Statistics; providing a method of cancelling licenses by the Commissioner and an appeal to the Courts of any cancellation of license; providing for fees to be collected; providing receipt forms; prohibiting certain acts; prohibiting untruths by employer or applicant; providing for the display of licenses; declaring it to be a violation to operate without a license and providing penalties; defining the duties and authority of the Commissioner; providing for enforcement by civil proceedings; providing that application and license shall be received as evidence; providing for the disposition of license fees collected; providing a saving clause; repealing conflicting laws; and declaring an emergency.

Be it enacted by the Legislature of the State of Texas:

Definition as used in the Act.

Section 1. (a) The term "person" means an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, or receiver.

(b) "Fee" means anything of value including money or other valuable consideration or services or the promise of any of the foregoing received by an employment agency from or on behalf of any person seeking employment or employees in payment for any service, either directly or indirectly.

(c) "Employer" means any person employing or seeking to employ any employee.

(d) "Employee" means any person performing or seeking to perform work or service of any kind for hire.

(e) "Private Employment Agent" means any person in this State who for a fee or without a fee offers or attempts to procure employment for employees or procure or attempts to procure employees for employers except employees as common laborers or agricultural workers.

(f) "Commissioner" shall mean the Commissioner of the Bureau of Labor Statistics.

(g) "Deputy or Inspector" shall mean any person who is duly authorized by the Commissioner to act in that capacity.

(h) "Agent" shall mean a Private Employment Agent as defined by this Act.

Exceptions.

Sec. 2. The provisions of this Act shall not apply to agencies engaged solely in the procurement of employment for public school teachers and administrators; the provisions of this Act shall not apply to any employment agency established and operated by this State, the United States Government, or any municipal government of this State; the provisions of this Act shall not apply to any person who may operate a Labor Bureau or employment office in conjunction with his own business for the sole and exclusive purpose of employing help for his own use within or without this State, nor to any common carrier operating in this State who may

⁵⁶ Vernon's Ann.Civ.St. art. 5221a-6.

operate an employment office in conjunction with his own business for the exclusive purpose of employing help for his own use within or without this State, provided that no fee or other charge or reduction is exacted from the salary or wages of the worker for employment given. If a fee or charge of any kind, either directly or indirectly is exacted of a worker, then said employer is deemed a Private Employment Agent and is subject to the provisions of this Act. The provisions of this Act shall not apply to farmers or stock raisers acting jointly or severally in securing laborers for their own use in this State where no fee is charged or collected, either directly or indirectly, for employment given; the provisions of this Act shall not apply to persons acting for members of their own family. The provisions of this Act shall not apply to any person, corporation, or charitable association chartered under the Laws of Texas for the purpose of conducting a free employment bureau or agency, nor to any veterans organization or labor union; nor to any nurses' organization operated without profit when conducted by registered nurses for the enrollment of its professional members only for the purpose of providing professional service to the public; the provisions of this Act shall not apply to a labor agent engaged exclusively in the business of procuring common laborers or agricultural workers for employers or any person engaged exclusively in the business of procuring or attempting to procure jobs for common laborers or agricultural workers.

Application and License.

Sec. 3. Application for a Private Employment Agency license shall be executed on blank forms prescribed and furnished by the Commissioner. Application for license to act as a Private Employment Agency may be made in person or by mail to the Commissioner upon blank application form which shall be verified by the applicant. Where the application is made by a firm, partnership, or an association of persons, it must be verified by each person for whose benefit the application is made, and such application shall also be accompanied by affidavits of at least five (5) creditable citizens who have resided in the county in which such applicant desires to conduct the business of a Private Employment Agency, for at least three (3) years, to the effect that the applicant or applicants are residents of the county in which such person desires to become a Private Employment Agent, and that such person or persons are of good moral character. The Commissioner may require additional evidence of the moral character of applicants and make such additional investigation of said applicants as he deems necessary, and no license shall be granted to any person except those of good moral character. Under no condition shall a license be issued to any person or persons, if anyone financially interested in or has a managerial control of the proposed Private Employment Agency has ever been convicted of a felony. Such applications shall be examined by the Commissioner and if he finds that the same complies with the law and that the applicant is entitled to a license, then he shall issue a license to the applicant and shall deliver such license to the applicant upon the payment of the license fee of One Hundred and Fifty Dollars (\$150). There shall be only one type of license issued under the provisions of this Act, which license shall be designated as a Private Employment Agency license, which will permit the licensee to Act as a Private Employment Agent, maintaining only one office under said license.

Each license issued by the Commissioner shall be good for a period of one year from the date of issuance. No occupation tax shall be levied by the State or any political subdivisions thereof in connection with the operation of a Private Employment Agency.

Bond.

Sec. 4. Each person making application for an employment agency license and before such license is issued, shall make and file with the Commissioner a good and sufficient bond executed by the applicant with good and sufficient surety in the penal sum of Five Thousand Dollars (\$5,000), payable to the State of Texas; said bond shall be conditioned that the obligor will not violate any of the duties, terms, conditions, and requirements of this Act, and that the principal, his agents or representatives will not make any false representation or statement to any person soliciting assistance from him for employees or employment, or solicited by him to accept employment.

Said bond is to further recite that any person injured or aggrieved by any false or fraudulent statement of such agent, his subagents or representatives, or any violation of any provisions of this Act thereof by such agent, subagent or representative, shall be entitled to bring suit thereon.

Suits on Bond.

Sec. 5. Any person injured or aggrieved by any action, conduct, false representation or false statement of any such employment agent, his subagents or representatives may bring suit for damages against such agent on said bond in any county where such action, conduct, false representation or false statement was made in any Court of competent jurisdiction, without the necessity of making the State a party thereto. Where the bond has become impaired by recoveries thereon to the extent of fifty per cent (50%) of the penal sum named therein, the Commissioner may, by a notice in writing, demand the execution of a new bond, which if not executed and submitted to the Commissioner within twenty (20) days for his approval, such failure to execute a new bond shall ipso facto forfeit and cancel the license issued to the principal named in said bond.

Agents to keep record.

Sec. 6. Every licensed Private Employment Agent shall keep and maintain an office in this State at which a complete record of business transacted, as required by this Act, shall be kept, such records may be inspected during normal business hours by the Commissioner of the Bureau of Labor Statistics, his deputies or inspectors when said Commissioner, his deputies or inspectors have been presented with a bona fide complaint against said agency and upon demand of the Commissioner, his deputies or inspectors, the agency so complained of must furnish records and any other evidence required with respect to such complaint. Failure on the part of any agent or agency to furnish such information as required by this Section shall be sufficient grounds for the Commissioner to cancel the license of said agent and he shall have the authority and it shall be his duty to do so.

Cancellation of license.

Sec. 7. The Commissioner shall have the authority, and it shall be his duty to cancel the license of any Private Employment Agent when it shall appear to his satisfaction, upon hearing, that said agent has been convicted in a State or Federal Court of an offense which under the laws of this State is a felony, or for any offense involving moral turpitude, or that said agent had obtained his license illegally or fraudulently or was guilty of fraud, false swearing, or deception in securing his license, or has violated any provisions of this Act.

The Commissioner shall not cancel the license of any agent until complaint in writing, made by a credible person, shall be filed with him, specifying the ground or grounds of the proposed cancellation, and a full

and fair hearing given to him thereon. Upon the filing of such complaint, the Commissioner shall fix a time and place, reasonably accessible to the agent complained against, for the hearing of said complaint. The Commissioner shall notify the agent so complained against of the time and place fixed for said hearing by a registered letter addressed to him at his post-office address as the same appears upon his application for license, accompanied by an exact copy of the complaint against him; and mailing of such notice and copy shall be sufficient and conclusive evidence of proper service of the procedure upon the agent so complained against. The agent so complained against shall have at least ten (10) days after the date said notice is mailed, exclusive of the day of mailing and the day of hearing, before hearing upon said complaint shall be had, and shall have the right to file answer, introduce evidence, examine witnesses, and to be heard both in person and by counsel. The Commissioner shall have the power to summon and compel the attendance of witnesses before him to testify in relation to any such complaint, and may require the production of any book, paper or document deemed pertinent thereto. Said Commissioner shall also have the power to provide for the taking of depositions of witnesses and evidence may be heard either from witnesses present and testifying orally, or by deposition taken under rules of existing civil court procedure and in such fair and impartial manner as the Commissioner may prescribe. Said hearing shall be had before the Commissioner and shall be conducted in a fair and orderly manner, and in accordance with rules of procedure to be adopted by the Commissioner, not in conflict with the rules of civil procedure.

At the conclusion of the hearing the Commissioner shall enter his findings and judgment in writing and the same shall be recorded by him in a permanent record to be kept by him, and a copy thereof furnished to the agent complained against. Any agent whose license shall be cancelled by the Commissioner, may, within thirty (30) days, after the cancellation thereof, and not thereafter, appeal such decision to the District Court of Travis County, and the trial shall be de novo and tried as any other civil action. If the agent whose license has been cancelled by the Commissioner shall, within ten (10) days after receiving information of such cancellation, give notice to the Commissioner in writing of his intention to appeal said decision, the action of the Commissioner in cancelling the said license shall be suspended for a period of thirty (30) days, but unless such appeal shall be filed within said time, the action of the Commissioner shall be final. If an appeal of the decision of the Commissioner shall be filed within said time, the action of the Commissioner shall remain suspended until the validity of the license in question shall be adjudicated by the Court in said appeal.

Any person whose license is finally suspended according to the provisions of this Section, shall be prohibited from obtaining another Private Employment Agency license for a period of five (5) years.

Fees.

Sec. 8. Private Employment Agents or Agencies as defined by this Act and who are engaged in the business of attempting to procure employment for employees or procures or attempts to procure employees for employers in skilled, professional, or clerical positions may charge, with the written consent of the applicant, a fee, not to exceed forty per cent (40%) of the first month's salary, which may be collected from the applicant only after employment has been obtained and accepted by the applicant.

Receipt forms prescribed.

Sec. 9. A receipt shall be given by the employment agent to all applicants for all fees collected from such applicants. The form of such receipt shall be prescribed by the Commissioner of Labor and shall contain the name of the applicant, the amount of the fee paid, the date, the character of the work or the position secured, the name of the employer, together with his post-office address and the location of the work the applicant is to perform.

Certain acts prohibited.

Sec. 10. No Private Employment Agent shall:

(a) Knowingly admit, or allow to remain on the premises of such agent any prostitute, gambler, intoxicated person or any person of bad character.

(b) Advertise his agency by means of cards, circulars, signs or in newspapers, or other publication, unless all such advertisements shall set forth the name and address of such agency; nor shall any such licensed person use any letterheads or blanks not containing the name and address of such agency.

(c) Publish or cause to be published any false or misleading advertisement or notice relating to his employment agency.

(d) Give any false information or make any false representation concerning employment to any applicant for employment.

(e) Send out an applicant for employment to any prospective employer without first having obtained a bona fide order from such prospective employer.

(f) Furnish any female for immoral purposes; or send, or cause to be sent any female to enter as servant, inmate, or for any purpose whatsoever, any place of bad repute, house of ill fame, or assignation houses, or any house or place of amusement kept for immoral purposes, the character of which such employment agent could have ascertained by reasonable diligence.

(g) Furnish employment to any child in violation of the Statutes regulating the employment of children or the compulsory attendance at school.

(h) Divide or offer to divide, directly or indirectly, any fee charged or received with any person who secures workers through such agent, or to whom workers are referred by such agent.

(i) No employment agent shall send any person to a prospective employer who is conducting a "lockout" against all or part of his employees; or whose employees, or a part of them are out on a strike, without first apprising said person of the existence of said "lockout" or strike.

Untruth by employer or applicant.

Sec. 11. No employer seeking employees, and no person seeking employment, shall knowingly make any false statement or conceal any material facts for the purpose of obtaining employees, or employment, by or through any Private Employment Agents.

To display license.

Sec. 12. Every Private Employment Agent shall keep conspicuously posted in his office the license issued to him under this law.

Penalty for doing business without license.

Sec. 13. Whoever acts as a Private Employment Agent or conducts a Private Employment Office in any county of this State without having first filed with the Commissioner of the Bureau of Labor Statistics of the State of Texas, an application for license as a Private Employment Agent as provided by this Act, and/or without having first paid the annual license fee as provided by this Act, and/or without having first secured a State

license as provided by this Act, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) and not exceeding Five Hundred Dollars (\$500), or by imprisonment in the county jail for not exceeding six (6) months, or by both such fine and imprisonment.

Authority of the Commissioner.

Sec. 14. The Commissioner of the Bureau of Labor Statistics and his deputies or inspectors are hereby empowered to enforce the provisions of this Act, and shall have the authority of peace officers in making arrests of any person or persons who violate, in their presence, any of the provisions of this Act; the Commissioner or his duly appointed deputies or inspectors may enter any employment office at any time when such employment office is open for business and inspect the registers and all other records of whatsoever kind and character of such Private Employment Agent for the purpose of ascertaining whether the provisions of this law are being violated, and the refusal of any Private Employment Agent to permit such inspection shall be a violation of the Act, and be sufficient reason for the Commissioner to cancel the license of such agent in accordance with the provisions of Section 7 of this Act.

It is further provided that any information obtained by the Commissioner of Bureau of Labor Statistics, or his duly appointed deputies or inspectors, from any Private Employment Agent's records of whatsoever kind and character are confidential and are not to be divulged by sign, word or in writing and is to be used only in carrying out their duties as enumerated in this Act.

Injunction.

Sec. 15. Any person who shall act as a Private Employment Agent, or who shall conduct an employment office, without first procuring a license as required and provided for in this Act may be enjoined from unlawfully pursuing such business or occupation, and the Attorney General shall bring suit for such purpose in the name of the State of Texas in Travis County, and the district or county attorney of any county wherein such person engages in such business or conducts an employment office in violation of this Act is hereby authorized to maintain in the proper Court of said county a suit in the name of the State of Texas to enjoin and prevent such person from unlawfully pursuing such occupation. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute any bond as a condition precedent to the issuing of any injunction or restraining order hereunder.

License as Evidence.

Sec. 16. Any application made by a Private Employment Agent for a license, or a certified copy thereof under the hand and seal of the Commissioner, shall be received as evidence in any Court in this State without the necessity of providing the execution thereof.

Disposition of License Fees Collected.

Sec. 17. The Commissioner shall deposit with the State Treasurer as provided by law all moneys received by him from license fees under the provisions of this Act, to be held in a separate fund known as the "Employment Agency Fund" and to be used for expenses incurred in inspecting, regulating and printing blank forms to be furnished such employment agencies by the Commissioner and the same, together with balance on hand in such fund on the effective date of this Act, is hereby appropriated for said purposes, and all such expenditures shall be verified by the person to whom such payments are made and on the approval

of such expenditures by the Commissioner it shall be the duty of the Comptroller of the State to draw his warrant on the Treasurer of the State for the amount of such expenditures in favor of the person claiming the same, to be paid out of the "Employment Agency Fund."

Saving Clause.

Sec. 18. That in the event any section, or part of section or provision of this Act be held invalid, unconstitutional, or inoperative, this shall not affect the validity of the remaining sections, or parts of sections of this Act, but the remainder of the Act shall be given effect as if said invalid, unconstitutional or inoperative section, or part of section or provision, had not been included. In the event any penalty, right or remedy created or given in any section or part of this Act is held invalid, unconstitutional or inoperative, this shall not affect the validity of any other penalty, right or remedy created or given either in the whole Act or in the section thereof containing such invalid, unconstitutional or inoperative part, and if any exception to or any limitation upon any general provision herein contained shall be held to be unconstitutional or invalid, the general provisions shall nevertheless stand effective and valid as if the same had been enacted without such limitation or exceptions.

Repealing Conflicting Laws.

Sec. 19. All laws or parts of laws in conflict with this Act are hereby repealed to the extent and in respect to such conflict, except that all valid licenses heretofore issued by the Bureau of Labor Statistics and in force at the time of the effective date of this Act shall continue in force until their expiration date, or are cancelled according to the provisions of this Act.

An Emergency.

Sec. 20. The fact that the laws governing Private Employment Agents are at this time inadequate and ambiguous and are contained in a Statute which attempts to regulate both Private Employment Agents and General Labor Agents, and the fact that such Statute places an undue and unjust burden upon the Bureau of Labor Statistics create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and such Rule is hereby suspended, and that this Act shall take effect and be in force from and after its passage, and it is so enacted.

Passed the House, May 5, 1949: Yeas 133, Nays 0; passed the Senate,

May 12, 1949: Yeas 30, Nays 0.

Approved May 21, 1949.

Effective May 21, 1949.