

2 **ESHB 1496** - S COMM AMD
3 By Committee on Labor & Commerce

4 ADOPTED W/000619 - 4/15/93

5 Strike everything after the enacting clause and insert the
6 following:

7 "**Sec. 1.** RCW 19.31.020 and 1990 c 70 s 1 are each amended to read
8 as follows:

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

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

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

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

20 (c) The sale of a list of jobs or a list of names of persons or
21 companies accepting applications for specific positions, in any form.

22 In addition the term "employment agency" shall mean and include any
23 person, bureau, employment listing ~~((or employment referral))~~ service,
24 employment directory, organization, or school which for profit, by
25 advertisement or otherwise, offers, as one of its main objects or
26 purposes, to procure employment for any person who pays for its
27 services, or which collects tuition, or charges for service of any
28 nature, where the main object of the person paying the same is to
29 secure employment. It also includes any business that provides a
30 resume to an individual and provides that person with a list of names
31 to whom the resume may be sent or provides that person with
32 preaddressed envelopes to be mailed by the individual or by the
33 business itself, if the list of names or the preaddressed envelopes
34 have been compiled and are represented by the business as having job
35 openings. The term "employment agency" shall not include labor union
36 organizations, temporary service contractors, proprietary schools,

1 nonprofit schools and colleges, career guidance and counseling
2 services, employment directories that are sold in a manner that allows
3 the applicant to examine the directory before purchase, theatrical
4 agencies, farm labor contractors, or the Washington state employment
5 agency.

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

10 (3) "Theatrical agency" means any person who, for a fee or
11 commission, procures or attempts to procure on behalf of an individual
12 or individuals, employment or engagements for circus, vaudeville, the
13 variety field, the legitimate theater, motion pictures, radio,
14 television, phonograph recordings, transcriptions, opera, concert,
15 ballet, modeling, or other entertainments, exhibitions, or
16 performances.

17 (4) "Farm labor contractor" means any person, or his agent, who,
18 for a fee, employs workers to render personal services in connection
19 with the production of any farm products, to, for, or under the
20 direction of an employer engaged in the growing, producing, or
21 harvesting of farm products, or who recruits, solicits, supplies, or
22 hires workers on behalf of an employer engaged in the growing,
23 producing, or harvesting of farm products or who provides in connection
24 with recruiting, soliciting, supplying, or hiring workers engaged in
25 the growing, producing, or harvesting of farm products, one or more of
26 the following services: Furnishes board, lodging, or transportation
27 for such workers, supervises, times, checks, counts, sizes, or
28 otherwise directs or measures their work; or disburses wage payments to
29 such persons.

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

33 (6) "Applicant", except when used to describe an applicant for an
34 employment agency license, means any person, whether employed or
35 unemployed, seeking or entering into any arrangement for his employment
36 or change of his employment through the medium or service of an
37 employment agency.

38 (7) "Person" includes any individual, firm, corporation,
39 partnership, association, company, society, manager, contractor,

1 subcontractor, bureau, agency, service, office, or an agent or employee
2 of any of the foregoing.

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

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

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

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

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

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

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

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

32 (c) Training in job search or interviewing skills through
33 individual counseling or group seminars, classes, or workshops:
34 PROVIDED, That the career guidance and counseling service does not
35 engage in any of the following activities:

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

38 (ii) Provides information on specific job openings;

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

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

5 Each employment agency shall keep records of all services rendered
6 employers and applicants. These records shall contain the name and
7 address of the employer by whom the services were solicited; the name
8 and address of the applicant; kind of position ordered by the employer;
9 dates job orders or job listings are obtained; subsequent dates job
10 orders or job listings are verified as still being current; kind of
11 position accepted by the applicant; probable duration of the
12 employment, if known; rate of wage or salary to be paid the applicant;
13 amount of the employment agency's fee; dates and amounts of refund if
14 any, and reason for such refund; and the contract agreed to between the
15 agency and applicant. An employment listing service need not keep
16 records pertaining to the kind of position accepted by applicant and
17 probable duration of employment.

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

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

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

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

36 (1) The name, address, and telephone number of the employment
37 agency;

1 (2) Trade name if any;
2 (3) The date of the contract;
3 (4) The name of the applicant;
4 (5) The amount of the fee to be charged the applicant, or the
5 method of computation of the fee, and the time and method of payments:
6 PROVIDED, HOWEVER, That if the provisions of the contract come within
7 the definition of a "retail installment transaction", as defined in RCW
8 63.14.010, the contract shall conform to the requirements of chapter
9 63.14 RCW, as now or hereafter amended;

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

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

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

21 "This is a contract. You understand (the employment listing
22 service) provides information on bona fide job listings but does not
23 guarantee you will be offered a job. You also understand you are
24 liable for the payment of the fee when you receive the list or
25 referral. Do not sign this contract before you read it or if any
26 spaces intended for the agreed terms are left blank. You must be given
27 a copy of this contract at the time you sign it."

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

30 "This is a contract. You understand [the employment directory]
31 provides information on possible employers along with general
32 employment, industry, and geographical information to assist you, but
33 does not list actual job openings or guarantee you will obtain
34 employment through its services. You also understand you are liable
35 for the payment of the fee when you receive the directory. Do not sign
36 this contract before you read it or if any spaces intended for the
37 agreed terms are left blank. You must be given a copy of this contract
38 at the time you sign it."

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

3 "You understand [the employment directory] provides information on
4 possible employers along with general employment, industry, and
5 geographical information to assist you, but does not list actual job
6 openings or guarantee you will obtain employment through its services.
7 You also understand you are liable for the payment of the fee when you
8 order the directory."

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

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

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

13 (c) Date of order;

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

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

23 (e) Signature of employment directory representative.

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

26 (1) Every applicant for an employment agency's license or a renewal
27 thereof shall file with the director a written application stating the
28 name and address of the applicant; the street and number of the
29 building in which the business of the employment agency is to be
30 conducted; the name of the person who is to have the general management
31 of the office; the name under which the business of the office is to be
32 carried on; whether or not the applicant is pecuniarily interested in
33 the business to be carried on under the license; shall be signed by the
34 applicant and sworn to before a notary public; and shall identify
35 anyone holding over twenty percent interest in the agency. If the
36 applicant is a corporation, the application shall state the names and
37 addresses of the officers and directors of the corporation, and shall
38 be signed and sworn to by the president and secretary thereof. If the

1 applicant is a partnership, the application shall also state the names
2 and addresses of all partners therein, and shall be signed and sworn to
3 by all of them. The application shall also state whether or not the
4 applicant is, at the time of making the application, or has at any
5 previous time been engaged in or interested in or employed by anyone
6 engaged in the business of an employment agency.

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

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

16 (4) No license to operate an employment agency in this state shall
17 be issued, transferred, renewed, or remain in effect, unless the person
18 who has or is to have the general management of the office has
19 qualified pursuant to this section. The director may, for good cause
20 shown, waive the requirement imposed by this section for a period not
21 to exceed one hundred and twenty days. Persons who have been
22 previously licensed or who have operated to the satisfaction of the
23 director for at least one year prior to September 21, 1977 as a general
24 manager shall be entitled to operate for up to one year from such date
25 before being required to qualify under this section. In order to
26 qualify, such person shall, through testing procedures developed by the
27 director, show that such person has a knowledge of this law, pertinent
28 labor laws, and laws against discrimination in employment in this state
29 and of the United States. Said examination shall be given at least
30 once each quarter and a fee for such examination shall be established
31 by the director. Nothing in this chapter shall be construed to
32 preclude any one natural person from being designated as the person who
33 is to have the general management of up to three offices operated by
34 any one licensee.

35 While employment directories may at the director's discretion be
36 required to show that the person has a knowledge of this chapter,
37 employment directories are exempt from testing on pertinent labor laws,
38 and laws against discrimination in employment in this state and of the
39 United States.

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

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

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

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

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

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

19 (1) If an applicant accepts employment by agreement with an
20 employer and thereafter never reports for work, the gross fee charged
21 to the applicant shall not exceed: (a) Ten percent of what the first
22 month's gross salary or wages would be, if known; or (b) ten percent of
23 the first month's drawing account. If the employment was to have been
24 on a commission basis without any drawing account, then no fee may be
25 charged in the event that the applicant never reports for work.

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

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

33 (4) If an applicant accepts temporary employment as a domestic,
34 household employee, baby sitter, agricultural worker, or day laborer,
35 then the gross fee charged such applicant shall not be in excess of
36 twenty-five percent of the first full month's gross salary or wages:
37 PROVIDED, That where an applicant accepts employment as a domestic or

1 household employee for a period of less than one month, then the gross
2 fee charged such applicant shall not exceed twenty-five percent of the
3 gross salary or wages paid.

4 (5) Any applicant requesting a refund of a fee paid to an
5 employment agency in accordance with the terms of the approved fee
6 schedule of the employment agency pursuant to this section shall file
7 with the employment agency a form requesting such refund on which shall
8 be set forth information reasonably needed and requested by the
9 employment agency, including but not limited to the following:
10 Circumstances under which employment was terminated, dates of
11 employment, and gross earnings of the applicant.

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

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

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

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

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

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

25 (3) No licensee or agent of the licensee shall solicit, persuade,
26 or induce an employee to leave any employment in which the licensee or
27 agent of the licensee has placed the employee; nor shall any licensee
28 or agent of the licensee persuade or induce or solicit any employer to
29 discharge any employee;

30 (4) No employment agency shall knowingly cause to be printed or
31 published a false or fraudulent notice or advertisement for obtaining
32 work or employment. All advertising by a licensee shall signify that
33 it is an employment agency solicitation except an employment listing
34 service shall advertise it is an employment listing service;

35 (5) An employment directory shall include the following on all
36 advertisements:

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

1 (6) No licensee shall fail to state in any advertisement, proposal
2 or contract for employment that there is a strike or lockout at the
3 place of proposed employment, if he has knowledge that such condition
4 exists;

5 ~~((+6+))~~ (7) No licensee or agent of a licensee shall directly or
6 indirectly split, divide, or share with an employer any fee, charge, or
7 compensation received from any applicant who has obtained employment
8 with such employer or with any other person connected with the business
9 of such employer;

10 ~~((+7+))~~ (8) When an applicant is referred to the same employer by
11 two licensees, the fee shall be paid to the licensee who first
12 contacted the applicant concerning the position for that applicant:
13 PROVIDED, That the licensee has given the name of the employer to the
14 applicant and has within five working days arranged an interview with
15 the employer and the applicant was hired as the result of that
16 interview;

17 ~~((+8+))~~ (9) No licensee shall require in any manner that a
18 potential employee or an employee of an employer make any contract with
19 any lending agency for the purpose of fulfilling a financial obligation
20 to the licensee;

21 ~~((+9+))~~ (10) All job listings must be bona fide job listings. To
22 qualify as a bona fide job listing the following conditions must be
23 met:

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

26 (b) A representative of the employer must be aware of the fact that
27 the job listing will be made available to applicants by the employment
28 listing service and that applicants will be applying for the job
29 listing;

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

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

38 (12) Any aggrieved person, firm, corporation, or public officer may
39 submit a written complaint to the director charging the holder of an

1 employment agency license with violation of this chapter and/or the
2 rules and regulations adopted pursuant to this chapter.

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

5 (1) No employment agency may bring or maintain a cause of action in
6 any court of this state for compensation for, or seeking equitable
7 relief in regard to, services rendered employers and applicants, unless
8 such agency shall allege and prove that at the time of rendering the
9 services in question, or making the contract therefor, it was the
10 holder of a valid license issued under this chapter.

11 (2) Any person who shall give consideration of any kind to any
12 employment agency for the performance of employment services in this
13 state when said employment agency shall not be the holder of a valid
14 license issued under this chapter shall have a cause of action against
15 the employment agency. Any court having jurisdiction may enter
16 judgment therein for treble the amount of such consideration so paid,
17 plus reasonable attorney's fees and costs.

18 (3) A person performing the services of an employment agency
19 ~~((or))~~, employment listing ~~((or employment referral))~~ service, or
20 employment directory without holding a valid license shall cease
21 operations or immediately apply for ~~((and obtain))~~ a valid license. If
22 the person continues to operate in violation of this chapter the
23 director or the attorney general has a cause of action in any court
24 having jurisdiction for the return of any consideration paid by any
25 person to the agency. The court may enter judgment in the action for
26 treble the amount of the consideration so paid, plus reasonable
27 attorney's fees and costs."

28 **ESHB 1496** - S COMM AMD
29 By Committee on Labor & Commerce

30 ADOPTED 4/15/93

31 On page 1, line 1 of the title, after "agencies;" strike the
32 remainder of the title and insert "and amending RCW 19.31.020,
33 19.31.030, 19.31.040, 19.31.100, 19.31.150, 19.31.170, 19.31.190, and
34 19.31.245."

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