

HOUSE BILL REPORT

HB 1496

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to employment agencies.

Brief Description: Regulating employment agencies.

Sponsors: Representative Dellwo.

Brief History:

Reported by House Committee on:
Commerce & Labor, March 3, 1993, DPS.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Conway; Horn; King; Springer; and Veloria.

Staff: Jim Kelley (786-7166).

Background: State law requires employment agencies to be licensed by the Department of Licensing. The law requires that employment agencies comply with regulations regarding: record-keeping; the form of contracts; bonding; fee amounts; and collection only after the applicant has become employed.

"Employment agency" is defined as any business in which any part of the business income is derived from a fee received from the applicants, and in which any of the following activities are engaged in: (1) the offering, promising, procuring, or attempting to procure employment for applicants; or (2) the giving of information regarding where and from whom employment may be obtained. In addition "employment agency," with some exceptions, includes any person, bureau, employment listing or employment referral service, organization, or school which for profit and as one of its main objectives or purposes, offers to procure employment for any person who pays for its services, where the main object of the person paying is to secure employment.

The definition of "employment agency" also includes any business that provides resumes to an individual and also provides that person with a list of names to whom the resumes may be sent, or provides that person with preaddressed envelopes.

A person performing the services of an employment agency without a license may not bring a cause of action seeking relief for services rendered. A person performing the services of an employment agency without holding a valid license must cease operations or immediately obtain a valid license. If the person continues to operate without a valid license, the director or the attorney general has a cause of action for treble damages. A person who pays a fee to an unlicensed employment agency for the performance of employment services has a cause of action against the employment agency and may recover treble damages plus reasonable attorney's fees and costs.

In 1991, the Washington State Supreme Court interpreted a 1990 amendment to the employment agency licensing law, which included employment listing services and employment referral services in the definition of employment agency. The court held that, reading the definition as a whole, a business must do more than merely sell a generic job list to be an employment agency. To fall within the definition of employment agency, an employment listing service must offer to procure or attempt to procure employment or provide information about where and from whom employment may be obtained. Employment directories are not considered to be employment agencies.

Summary of Substitute Bill: The definition of "employment agency" is amended. Employment agency means any business in which any part of the income is derived from a fee received from applicants, and in which any of the following activities are engaged in: (1) the offering, promising, procuring, or attempting to procure employment for applicants; (2) the giving of information regarding where and from whom employment may be obtained; or (3) the sale of a list of jobs of persons or companies accepting applications for specific positions, in any form. "Employment agency" includes employment directories.

"Employment agency" also includes any business that provides resumes to an individual and also provides that person with a list of names to whom the resumes may be sent, or provides that person with preaddressed envelopes, if the list of names or the preaddressed envelopes have been compiled and are represented by the business as having job openings. Nonprofit schools and colleges, and career guidance and

counseling services are specifically excluded from the definition of "employment agency."

A definition is provided for "employment listing service." An employment listing service is defined as a business that provides lists of specified positions of employment available with any employer other than itself or that holds itself out to applicants as able to provide information about specific positions of employment available with any employer other than itself, and that charges a fee to the applicant for its services and does not set up interviews or otherwise intercede between employer and applicant. A "career guidance and counseling service" is defined and distinguished from an employment agency.

"Employment directory" means any business that: (1) provides lists of employers; (2) does not provide lists of specified positions of employment; (3) holds itself out to applicants as able to provide information on employment in specific industries or geographical areas; and (4) charges a fee to the applicant for its services.

The record-keeping requirements on employment agencies are expanded to include: dates of contact with employer; dates job orders or job listings are obtained; and subsequent dates job orders or job listings are verified as still being current. An employment listing service and an employment directory need not keep records pertaining to the kind of position accepted by applicants and probable duration of employment as is required from other employment agencies.

The language required from employment listing services and employment directories in the notice that must be included in their contracts is made different than the language required in other employment agency contracts. The notice explains the service offered and the customer's rights.

Employment listing services may charge or accept a fee at the time that they provide the applicant with the job listing or referral. An employment directory may accept a fee when it provides the directory. Employment listing services must advertise as employment listing services and not as employment agencies. Employment directory advertisements must say that the directory provides information on possible employers and general employment information but does not list actual job openings.

All job listings must be bona fide job listings. The job openings listed must be obtained from the employer and must be actual and current. All listings in employment directories must be current. The employment directory must

contact the employer at least once per month to verify that the employer is currently hiring.

Substitute Bill Compared to Original Bill: "Employment directories" are added to the definition of "employment agency." However, employment directories that are sold in a manner that allows the applicant to examine the directory before purchase are not included.

"Employment directory" means any business that: (1) provides lists of employers; (2) does not provide lists of specified positions of employment; (3) holds itself out to applicants as able to provide information on employment in specific industries or geographical areas; and (4) charges a fee to the applicant for its services.

Employment directories are required to keep records that are different from those kept by employment agencies, including, the amount of the fee, dates and amounts of refunds, and the contract agreed to between the employment directory and the applicant.

The notice to be contained in the contract of an employment directory differs from the notice required of other employment agencies.

Employment directories are exempt from testing on pertinent labor laws and laws against discrimination required of other employment agencies. An employment directory may charge or accept a fee when it provides the applicant with the directory. An employment directory must include the following information in all advertising: "Directory provides information on possible employers and general employment information but does not list actual job openings."

All listings for employers listed in employment directories shall be current. The employment directory must contact the employer at least once per month to verify that the employer is currently hiring.

Fiscal Note: Requested March 1, 1993.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Employment listing services and employment directories need to be regulated in a similar manner as employment agencies. Consumers rely on these services. The information they provide should be bona fide and current. Some companies have taken advertisements straight out of the help wanted section of the paper and sold them as employment

lists. This type of behavior should not be tolerated. The proponents of this bill want to include employment directories if that is what the attorney general wants.

Testimony Against: None.

Witnesses: Representative Dellwo, Prime Sponsor (in favor); and Jeevan Wayne, Job Center, Inc. (in favor).