

CHAPTER 4

PRIVATE EMPLOYMENT AGENCIES

PRIVATE EMPLOYMENT AGENCY ACT

[NOTE: Act 536 of 1989 abolished the Arkansas Employment Agency Advisory Council and transferred its powers, duties and functions to the Director of the Department of Labor.]

11-11-101. Recruitment of labor by foreign labor agents.

(a) No foreign labor agent, labor bureau or employment agency, or any other person shall enter this state and attempt to hire, induce, or take from this state any labor, singularly or in groups, for any purpose, whether or not a fee or charge is extracted from the worker, without first applying to the Director of the Department of Labor for a license to do so and filing with the director:

(1) A statement as to where the labor is to be taken, for what purpose, for what length of time, and whether

transportation is to be paid to and from destination, if temporary;

(2) A statement of the financial standing of the employer desiring the labor;

(3) An affidavit of authority to represent the employer in this state; and

(4) Whatever other information the director may require.

(b)(1) The director shall determine whether the person desiring the labor from this state is a labor agent, labor bureau,

or employment agency and, if so, whether the applicant is qualified to be licensed under the laws of this state and

according to the provisions of this section.

(2) The director, after the investigation, may refuse to license or register the applicant until he has complied with

the provisions of this section.

(3) The applicant shall, in the event of unfavorable action by the director, have the right to appeal to the proper

court.

(c) This section is cumulative to all existing laws affecting the hiring or employment of labor.

11-11-201. Title.

This subchapter may be cited as the "Arkansas Private Employment Agency Act of 1975."

11-11-202. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Department" means the Department of Labor;

(2) "Director" means the Director of the Department of Labor;

(3) "Person" means any individual, company, firm, association, partnership, or corporation;

(4) "Employee" means a person performing or seeking to perform work or service of any kind or character for compensation;

(5) "Employer" means a person employing or seeking to employ a person for compensation;

(6)(A) "Employment agent" or "employment agency" means any person engaged for hire, compensation, gain, or

profit in the business of furnishing persons seeking employment with information or other service enabling the persons to

procure employment by or through employers or furnishing any other person who may be seeking to employ or may be in

the market for help of any kind with information enabling the other person to procure help.

(B) However, “employment agent” or “employment agency” does not mean:

(i) Any person who prepares resumes for individuals for employment purposes, if the person who prepares the resumes does not refer or purport to refer prospective employees to employers or employers to prospective employees, does not represent himself or herself as an employment agency, or does not have any financial connection with any employment agency;

(ii) Any person who employs individuals to render part-time or temporary services to, for, or under the direction of a third person if the person employing the individuals, in addition to wages or salaries, pays federal social security taxes and state and federal unemployment insurance and secures work-service to, for, or under the direction of a third person;

(iii) Any bona fide nursing school, nurses’ registry, management consulting firm, business school, or 36

vocational school whose primary function and purpose is training and education, except that if such an organization

charges a fee, directly or indirectly, for job placement of individuals, the organization shall be an employment agency

within the meaning of this subchapter;

(iv) A labor organization;

(v) Any person who publishes advertisements placed and paid for by a third person seeking employment or an

employee, provided that the person does not procure or offer to procure employment or employees;

(vi) Any person who contracts with an employer to recruit employees for the employer without charge to the prospective employee.

(7) “Agency manager” means the individual designated by the employment agency to conduct the general management, administration, and operation of a designated employment agency office. Every employment agency must

maintain a licensed agency manager at each of its separate office locations;

(8) “Employment counselor” means an employee of any employment agency who interviews, counsels, or advises

applicants or employers or both on employment or allied problems, or who makes or arranges contracts or contacts

between employers and employees. The term “employment counselor” includes employees who solicit orders for

employees from prospective employers;

(9) “Applicant” except when used to describe an applicant for an employment agency or agency manager’s or

counselor’s license means any person, whether employed or unemployed, seeking or entering into an arrangement for

employment or change of employment through the medium or service of an employment agency; and

(10) “Fee” shall mean anything of value, including any money or other valuable consideration exacted, charged,

collected, or received directly or indirectly, or paid or contracted to be paid for any services or act by an employment

agency.

11-11-203. Penalty.

(a) The Director of the Department of Labor shall have authority to impose a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500) for violation of the provisions of this subchapter by an employment agency or its employees or agents.

(b) The director shall notify the employment agency in writing of the reasons for imposition of a fine and at such time shall make available to the employment agency a signed written statement by any individual having filed a complaint with the director relative to the matter for which a fine has been imposed by the director.

(c) The agency shall have the right to a hearing before the director and the right to judicial review provided by §11-11-223, with respect to the fine.

11-11-204. Director and department - Powers and duties.

(a) It shall be the duty of the Department of Labor, and it shall have the power, jurisdiction, and authority to administer and enforce the provisions of this subchapter.

(b) The Director of the Department of Labor shall have the power, jurisdiction, and authority to issue licenses to employment agencies, agency managers, and counselors and to refuse to issue, revoke, or suspend such licenses when, after due investigation, and in compliance with the procedures set forth in §§11-11-221 and 11-11-222, the director finds that the applicant is for good and sufficient cause unfit to be an employment agent, agency manager, or counselor within the meaning of this subchapter or any rules, regulations, or orders lawfully promulgated under this subchapter.

(c)(1) Complaints against any person, employment agent, agency manager, or counselor may be made to the department orally or in writing.

(2) The director shall have the power to compel attendance of witnesses by issuance of subpoenas, administer oaths, direct production of documents and records, and direct taking of testimony and evidence concerning all matters within the jurisdiction of the department.

(3) The director may order testimony to be taken by deposition in any proceeding pending before the department at any stage of the proceeding.

(4) The director or his duly authorized agent shall at all reasonable times have access to, for the purpose of examination and copying, the books, records, papers, and documents of any person being investigated or proceeded against under the provisions of this subchapter, so long as the books, records, papers, or documents sought to be inspected or copied are reasonably related to the investigation or proceeding being conducted by the director.

(5) The director or his authorized agent shall, upon application of any party to proceedings before the director, issue to the party subpoenas requiring the attendance and testimony of witnesses or the production of any books, records, papers, or documents reasonably related to issues involved in proceedings before the director or investigation conducted

by the director.

(6) If any person in proceedings before the director or in investigations conducted by the director disobeys or
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resists any lawful order or process issued by the director or his authorized agents, or fails to produce, after being lawfully directed to do so, any book, paper, record, or document, or refuses to appear and testify after being subpoenaed to do so, the director shall certify the facts to any court of competent jurisdiction in the state, or to the Circuit Court of Pulaski County.

(7) The court shall have authority to conduct hearings and punish any person for failure or refusal to testify or produce books, papers, documents, or records subpoenaed or ordered by the director as though the conduct constituted contempt of court.

(8) Witnesses summoned by the director or his authorized agent shall be paid the same fees and mileage paid to witnesses in the courts of this state.

(d)(1) The director, with the assistance and approval of the advisory council, shall have authority to prescribe such rules and regulations for the conduct of the business of private employment agencies as may be deemed necessary to carry out the provisions of this subchapter.

(2) These rules shall have the force and effect of law and shall be enforced by the director in the same manner as the provisions of this subchapter.

(3) Adoption of rules and regulations pursuant to this subsection shall be carried out in compliance with the Arkansas Administrative Procedure Act, §§25-15-201 et seq.

(e) The department shall have authority to investigate employment agents, agency managers, and counselors. The department shall have the right to examine records required by law to be kept and maintained by employment agents, agency managers, and counselors and to examine the offices where the business is or shall be conducted by them.

11-11-205. Arkansas Employment Agency Advisory Council - Creation - Members.

(a) There shall be an Arkansas Employment Agency Advisory Council composed of five (5) members appointed by the Director of the Department of Labor.

(b)(1) Each member of the council shall be of good character, a citizen of the United States, and domiciled in this state for at least one (1) year immediately preceding his appointment to the advisory council.

(2)(A) Of the appointive members, three (3) members shall have, for at least one (1) year immediately preceding their appointment, occupied executive or managerial positions in the private employment agency industry in this state.

(B) Two (2) members of the council shall represent the general public.

(c)(1) Members appointed to the advisory council shall serve terms of three (3) years.

(2) Each member of the council shall hold office until the appointment and qualification of his successor.

(d) Vacancies occurring in the membership of the council for any cause shall be filled by appointment for the balance of the unexpired term.

(e) The director may remove any member of the council for misconduct, incompetency, or neglect of duty.

(f) The director may reappoint members of the council whose terms expire as provided in this section to succeeding terms of membership on the council.

(g) Each member of the council shall serve without compensation but may receive expense reimbursement in accordance with §25-16-901 et seq.

11-11-206. Arkansas Employment Agency Advisory Council - Officers - Meetings.

(a)(1) The council may meet at least once in each calendar quarter of each year.

(2) All meetings of the council shall be open to the public, and all records of the council shall be open to inspection, except as otherwise prescribed by law.

(3) Three (3) members shall constitute a quorum for the transaction of business.

(b) The council shall elect from its members, each for a term of one (1) year, a chairman and vice-chairman and may appoint such committees as it deems necessary to carry out its duties.

(c) Any three (3) members of the council shall have authority to call meetings of the council, and the director shall also have authority to call meetings of the council.

11-11-207. Arkansas Employment Agency Advisory Council - Powers and duties.

The council shall:

(1) Inquire into the needs of the employment agency industry and make such recommendations with respect thereto

as, after consideration, may be deemed important and necessary for the welfare of the state, the health and welfare of the

public, and welfare and progress of the employment agency industry;

(2) Consider and make appropriate recommendations in all matters submitted to it by the director;

(3) Assist the director in collection of such information and data as the director may deem necessary to proper administration of this subchapter;

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(4) Assist the director in the formulation, adoption, amendment, or repeal of any rules or regulations authorized by

this subchapter. Both the director and a majority of a properly constituted quorum of the advisory council must approve

any rules or regulations, or amendments or repeals thereof, before they become effective; and

(5) Assist and advise the director regarding formulation, revision, and administration of examinations required by this

subchapter.

11-11-208. License required - Penalties.

(a) No person shall engage in the business of or act as an employment agency, agency manager, or counselor unless he first obtains a license from the department.

(b)(1)(A) Any person who shall engage in the business of or act as an employment agent, agency manager, or

counselor without first procuring a license is guilty of a misdemeanor.

(B) He shall be punished by a fine of not less than fifty dollars (\$50.00) and not more than two hundred fifty

dollars (\$250) for each day of acting as an employment agent, agency manager, or counselor without a license or by

imprisonment for not more than three (3) months, or by both.

(2) In addition to the penalties described in subdivision (b)(1) of this section, upon petition of the director, any

court in the state having the statutory power to enjoin or restrain shall have jurisdiction to restrain and enjoin any person

who engages in the business of or acts as an employment agent, agency manager, or counselor without having first

procured a license for so engaging or acting.

11-11-209. Certificate of exemption required for certain organizations.

(a) Bona fide nursing schools, nurses' registries, management consulting firms, business schools, vocational schools

whose primary function and purpose is training and education, and resume services shall obtain from the Director of the

Department of Labor a certificate of exemption from the requirements of this subchapter.

(b) In connection with issuance of a certificate of exemption and with respect to an organization's continued

eligibility for a previously issued certificate of exemption, the director shall have those investigative powers conferred by

§11-11-204.

11-11-210. Employment counselor's license - Application - Qualifications

(a) To be eligible for application for an employment counselor's license, the applicant shall be:

(1) A citizen of the United States;

(2) Of good moral character;

(3) A person whose license has not been revoked within two (2) years from the date of application; and

(4) Able to demonstrate business integrity.

(b)(1) Every applicant for an initial license for employment counselor shall file with the Department of Labor a

written application on a form prescribed and furnished by the Director of the Department of Labor.

(2) The applicant shall file at least two (2) letters of character reference from persons of reputed business or

professional integrity.

(3) This application shall contain information prescribed by the director.

11-11-211. Agency manager license - Application - Qualifications.

(a) To be eligible to apply for a license to act as an agency manager, the applicant shall be:

(1) A citizen of the United States;

(2) Of good moral character;

(3) At least twenty-one (21) years of age;

(4) A person whose license has not been revoked within two (2) years from the date of the application;

(5) A person who has completed the twelfth grade, except that the Director of the Department of Labor may

establish proof necessary to him that the applicant is possessed of a twelfth grade education in terms of intellectual

competency, judgment, and achievement; and

(6) A person who demonstrates business integrity, financial responsibility, and judgment.

(b)(1) Every applicant for an initial license for agency manager shall file with the Department of Labor a written

application on a form prescribed and furnished by the director.

(2) The applicant shall file at least two (2) letters of character reference from persons of reputed business or

professional integrity.

(3) This application shall contain information prescribed by the director.

11-11-212. Employment agency license - Application - Qualifications.

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(a) To be eligible to apply for a license to operate an employment agency, the applicant shall be:

(1) A citizen of the United States;

(2) Of good moral character;

(3) At least twenty-one (21) years of age;

(4) A person whose license has not been revoked within two (2) years from the date of the application;

(5) A person who has completed the twelfth grade, except that the Director of the Department of Labor may

establish proof necessary to him that the applicant is possessed of a twelfth grade education in terms of intellectual

competency, judgment, and achievement; and

(6) A person who demonstrates business integrity, financial responsibility, and judgment.

(b)(1) Every applicant for an initial employment agency license and every applicant for a renewal license shall file

with the director a completed application on a form prescribed and furnished by the director.

(2)(A) The application shall be signed by the applicant and sworn to before anyone qualified by law to administer

oaths.

(B) If the applicant is a corporation, the application shall state the names and home addresses of all shareholders,

officers, and directors of the corporation and shall be signed and sworn to by the president, treasurer, and secretary

thereof.

(C) If the applicant is a partnership, the application shall state the names and home addresses of all partners therein

and shall be signed and sworn to by all of them.

(2) The applicant shall file at least two (2) letters of character reference from persons of reputed business or

professional integrity.

(3) This application shall also contain such other information as the director may prescribe.

11-11-213. Employment agency license - Bond required - Action on the bond.

(a) Every application for issuance or renewal of an employment agency's license shall be accompanied by a bond in

the sum of five thousand dollars (\$5,000) with a duly licensed surety company or companies authorized to do business in

this state.

(1) The terms and conditions of the bond shall be approved by the director.

(2) The bond shall be conditioned that the employment agency and each member, employee, shareholder, director,

or officer of a person, firm, partnership, corporation, or association operating as the employment agency will not violate

the provisions of this subchapter or violate rules, regulations, or orders lawfully promulgated by the director or violate the

terms of any contract made by the employment agent in the conduct of its business.

(b)(1) If any person shall be aggrieved by the misconduct of any licensee, that person may maintain an action in his

own name upon the bond of the employment agency in any court of competent jurisdiction or in the Circuit Court of

Pulaski County.

(2) All claims shall be assignable, and the assignee shall be entitled to the same remedies upon the bond of the

licensee as the person aggrieved would have been entitled to if the claim had not been assigned.

(3) Any claim so assigned may be enforced in the name of the assignee. Any remedies given by this section shall

not be exclusive of any other remedy which would otherwise exist.

(c) Action on the bond required by this section may be maintained by the Director of the Department of Labor in the

name of the state in any court of competent jurisdiction, or in the Circuit Court of Pulaski County, for the benefit of any

person or persons aggrieved by the misconduct of the licensee.

(d)(1) If any licensee fails to file a new bond with the department within thirty (30) days after notice of cancellation

by the surety of the bond required by this section, the license issued to the principal under the bond is suspended until

such time as a new surety bond is filed with and approved by the director.

(2) A person whose license is suspended pursuant to this section shall not carry on the business of an employment

agency during the period of the suspension.

11-11-214. Investigation of license applicant by director.

(a) Upon filing an application for license as provided herein, the Director of the Department of Labor shall cause an

investigation to be made regarding the character, business integrity, and financial responsibility of the license applicant.

(b) The director shall also determine the suitability or unsuitability of the applicant's proposed office location.

(c) An application for an employment agency's, agency manager's, or employment counselor's license shall be

rejected by the director if it is found that any person named in the license application is not of good moral character,

business integrity, or financial responsibility or if there is good and sufficient reason within the meaning and purpose of

this subchapter for rejecting the application.

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11-11-215. Employment agency license - Scope - Change of license.

(a)(1) An employment agent's license issued pursuant to this subchapter shall protect only those persons to whom it is

issued and only the location for which it is issued.

(2) A separate license shall be required for each separate office location operated by an employment agency.

(3) No license shall be valid to protect any business transacted under any name other than that designated in the license.

(b) No employment agent shall permit any person not mentioned in the license or license application to become a

member, officer, director, shareholder, or partner in the conduct of the business of the employment agent unless written

consent of the Director of the Department of Labor and written consent of the surety on the bond required by this

subchapter shall first be obtained.

(c) The location of an employment agency shall not be changed without written consent from the director, and a new

license application shall be required for any change of office location in excess of twenty-five (25) miles.

(d) A charge of ten dollars (\$10.00) shall be made by the Department of Labor for recording of authorization for each change of office location authorized by this section.

11-11-216. Examination for licenses.

(a)(1) Every applicant for a permanent employment agent's, permanent agency manager's, or permanent counselor's

license shall, before the director issues a license to him, be required to take and successfully complete a written

examination, prepared by the Director of the Department of Labor with the assistance of the advisory council. The

examination shall establish the competency of the applicant to operate and conduct an employment agency or to perform

service as an agency manager or counselor for the agency.

(2) No examination shall be required for renewal of any license issued pursuant to this subchapter unless the

license has been suspended, revoked, or submitted late, causing the application to be treated as a new application.

(b) The Department of Labor shall hold examinations at such times and places as it shall reasonably determine, except

that examinations shall be given to license applicants at least once every sixty (60) days.

(c)(1) An examination fee of five dollars (\$5.00) shall be paid by each applicant in addition to the license fee.

(2) The examination fee shall be retained by the department, whether or not the applicant successfully completes the examination.

(3) The examination fee shall be forfeited if the applicant does not take the examination within three (3) months of the application date.

11-11-217. License fees.

(a) Before a permanent license shall be granted to a license applicant, an applicant shall pay the following annual fee

for each license:

(1) Two hundred fifty dollars (\$250) for an employment agency;

(2) Twenty-five dollars (\$25.00) for an employment agency manager;

(3) Twenty dollars (\$20.00) for an employment counselor.

(b) Multiple licenses for a person simultaneously performing the functions of employment agent, agency manager, or

employment counselor will not be required. Such person shall procure a license commensurate with the highest level of

job duties and responsibilities customarily and regularly performed by the person.

(c) All moneys received from licensing shall be deposited in the general fund of the State Treasury.

11-11-218. Temporary licenses.

(a)(1) The Director of the Department of Labor shall have authority to issue a temporary license for operation of a

private employment agency, which shall be valid for no more than ninety (90) days, upon submission by the applicant, for

the license of:

(A) A properly completed application form furnished and approved by the director;

(B) Submission of evidence of the applicant's compliance with the bonding requirements of this subchapter;

and

(C) Payment of a temporary license fee of one hundred dollars (\$100).

(2) The temporary license may be issued only if, after investigation, it reasonably appears that the applicant will meet the qualifications for a permanent private employment agency license.

(b)(1) The director shall have authority to issue temporary licenses for agency managers and employment counselors,

which shall be valid for no more than ninety (90) days, upon submission by the applicant for such license of:

(A) A properly completed application form, furnished and approved by the director; and

(B) Payment of a temporary license fee of ten dollars (\$10.00).

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(2) The temporary licenses for agency managers and employment counselors may be issued only if, after investigation, it reasonably appears that the applicant will meet the qualifications of a permanent license as agency manager or employment counselor.

(3) Temporary licenses issued to agency managers and employment counselors are nontransferable and are

automatically rescinded upon suspension or termination of the employment of the agency manager or employment counselor.

(4) The director shall approve or reject an application for a temporary agency manager's license or temporary employment counselor's license within five (5) days after receipt of a properly completed application for the license.

11-11-219. Renewal of licenses.

(a) Every license issued pursuant to this subchapter shall remain in force for one (1) year from the date of issue or until the end of the state's fiscal year, whichever occurs first, unless the license has been revoked pursuant to the provisions of this subchapter.

(b) Applications for renewal of all licenses provided by this subchapter must be filed with the Director of the Department of Labor no later than thirty (30) days prior to expiration of the license.

(c) Any licensee who fails to renew a license by the expiration date shall be automatically suspended from the right to engage in the activity authorized by the license until the license is renewed.

(d) Every application for renewal of a license must be accompanied by payment of the required license fee and

evidence of compliance with the bonding requirements of this subchapter.

11-11-220. Cessation of business by licensee.

(a)(1) If an employment agent ceases business operations, the agent shall, as soon as reasonably possible, notify the

Department of Labor and shall deliver, or forward by mail, the agent's license to the Department of Labor. Failure to give

notice, or failure to deliver such employment agent's license, shall be a violation of §11-11-208.

(2)(A) Where one (1) or more individuals, on the basis of whose qualifications an agency license has been obtained, ceases to be connected with the licensed business for any reason whatsoever, the agency business may be

carried on for a temporary period not to exceed thirty (30) days, under such terms and conditions as the Director of the Department of Labor shall provide by regulation for the orderly closing of the business or the replacement and qualification of a new member, partner, or corporate officer, director, or shareholder.

(B) The agency's authorization to continue to do business under this subchapter, beyond the thirty-day period provided in this subdivision (a)(2), shall be contingent upon approval by the director of any new member, principal, partner, officer, director, or shareholder.

(b)(1) If an agency manager terminates his employment with an employment agency by which he is employed, the agency shall notify the department, as soon as reasonably possible, to enable the department to know at all times the

identity of the person charged with the general management of each of the agency's office locations.

(2) The employment agency shall also deliver, or forward by mail, the agency manager's license together with the reasons why the agency manager has terminated his position with the employment agency.

(c) If an employment counselor terminates his employment with the employment agency by which he is employed, the agency shall as soon as reasonably possible, notify the department and deliver, or forward by mail, the employment counselor's license to the department, together with the reasons for his termination.

11-11-221. Issuance, refusal, suspension, or revocation of license . Grounds.

(a) The Director of the Department of Labor shall issue a license as an employment agent, agency manager, or counselor to any person who qualifies for the license under the terms of this subchapter.

(b) The director may, in addition, refuse to issue a license to any person or may suspend or revoke the license of any employment agent, agency manager, or employment counselor or impose administrative fines as provided for in §11-11-203, when the director finds that any of the following conditions exist:

(1) That the employment agent, agency manager, or counselor has violated any of the provisions of this subchapter;

(2) That the employment agent, agency manager, or counselor has violated any of the rules and regulations or other orders lawfully promulgated by the director;

(3) That the employment agent, agency manager, or counselor has violated the conditions of the bond required by §11-11-213;

(4) That the person, employment agent, agency manager, or employment counselor has engaged in a fraudulent, deceptive, or dishonest practice;

(5) That the person, employment agent, agency manager, or employment counselor has been legally adjudicated incompetent; or

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(6) That the applicant is for good and sufficient cause unfit to be an employment agent, agency manager, or employment counselor within the meaning of this subchapter or of any of the rules and regulations or order lawfully

promulgated by the director.

(c) This section and §11-11-222 shall not be construed to relieve any person from civil liability or from criminal

prosecution under the provisions of this subchapter or under other laws of this state.

11-11-222. Refusal, suspension, or revocation of license - Notice and hearing.

(a)(1) The Director of the Department of Labor may not refuse to issue a license or suspend or revoke a license unless

it furnishes the person, employment agent, agency manager, or employment counselor with a written statement of the

charges against him and affords him an opportunity to be heard on the charges.

(2) At the time written charges are furnished to an employment agency, the director shall make available to the

agency a signed written statement by any individual having filed a complaint with the director relative to the matter for

which charges have been filed by the director.

(3) The agency shall be given at least twenty (20) days written notice of the date and time of the hearing.

The

notice shall conform to the standards for notices set forth in the Arkansas Administration Procedure Act, §25-15-201 et

seq.

(4) It shall be sent by certified mail, return receipt requested, to the address of the person as shown on his application for license, or it may be served in the manner in which a summons is served in civil cases

commenced in the

circuit courts of this state.

(b)(1) At the time and place fixed for the hearing, the director shall hold the hearing and thereafter make his order

either dismissing the charges or refusing, suspending, or revoking the license.

(2)(A) At the hearing, the accused shall have the right to appear personally and by counsel and to cross-examine

witnesses against him.

(B)(i) He shall be allowed to produce evidence and witnesses in his defense and shall have the right to have

witnesses subpoenaed.

(ii) The subpoenas shall be issued by the director.

(c)(1) A stenographic record of all proceedings shall be made, and a transcript of the proceedings shall be made if

desired by the department or by the accused.

(2) The transcript shall be paid for by the party ordering it.

11-11-223. Judicial review of director's administrative orders.

(a) If the Director of the Department of Labor refuses to grant a license, suspends or revokes a license that has been

granted, or imposes an administrative fine as provided in §§11-11-213, 11-1-221 and 11-11-222, the person adversely

affected or aggrieved by the order of the director issued pursuant to the provisions of §§11-11-221 and 11-11-222 may

obtain a review of the order.

(b) The order may be brought in the circuit court in the judicial district in which the violation is alleged to have

occurred, where the employment agent, manager, or counselor worked, or in the Circuit Court of Pulaski County or, if the

aggrieved person is a nonresident of the state, in the Circuit Court of Pulaski County.

(c)(1) The review may be obtained by filing in the court within thirty (30) days following the issuance of the order a

written petition praying that the order be modified or set aside.

(2)(A) A copy of the petition shall be forthwith transmitted by the clerk of the court to the Department of Labor.

(B) Thereupon, the department shall file in the court the record of proceedings before the department.

(d) Upon the filing, the court shall have jurisdiction of the proceedings and of the questions determined therein and

shall have power to grant such temporary relief or restraining order as it deems just and proper and to make and enter

upon the pleadings, testimony, and proceedings set forth in the record a decree affirming, modifying, or setting aside, in

whole or in part, the order of the director and enforcing the same to the extent that the order is affirmed.

(e) Commencement of proceedings under this section shall not, unless ordered by the court, operate as a stay of the

order of the director.

(f)(1) No objection which has not been urged before the director shall be considered by the court.

(2) The findings of the director with respect to questions of fact, if supported by substantial evidence on the record

considered as a whole, shall be conclusive.

(g)(1) If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of

the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the

evidence in the hearing before the director, the court may order the additional evidence to be taken before the director and

made a part of the record.

(2)(A) The director may modify his findings as to the facts or make new findings, by reason of additional evidence

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so taken and filed, and the director shall file the modified or new findings with the court.

(B) The findings with respect to questions of fact, if supported by substantial evidence on the record considered

as a whole, shall be conclusive.

(h) Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree

shall be final, except that it shall be subject to review by the Supreme Court.

(i)(1) The department shall certify the record of its proceedings if the party commencing the proceedings shall pay to

it the cost of preparing and certifying the records, including the recording and transcribing of all testimony introduced in

the proceedings.

(2) If payment of the costs of preparing and certifying the records, including the recording and transcribing of all

testimony introduced in the proceedings, is not made by the party commencing the proceedings for review within ten (10)

days after notice from the department of the cost of preparing and certifying the record, the circuit court in which the

proceeding is pending, on the motion of the director, shall dismiss the petition.

11-11-224. Deceptive practices.

(a) No employment agent shall publish or cause to be published any fraudulent or misleading notice or advertisement

of the employment agency, by means of cards, circulars, or signs or in newspapers or other publications.

(b) All letterheads, receipts, and blanks shall contain the full name and address of the employment agency, and the

licensee shall state in all notices and advertisements the fact that the licensee is, or conducts, a private employment agency.

(c) No employment agency shall print, publish, or paint on any sign window or insert in any newspaper or publication

a name similar to that of the Arkansas State Employment Service or any other governmental agency.

(d) No employment agency shall print or stamp on any receipt or on any contract used by the agency any part of this

subchapter unless the entire section from which the part is taken is printed or stamped thereon.

(e) No employment agency shall allow any person in its employment to use any names other than their legal names in

the course of, and in respect to, their employment with the agency.

(f) No employment agency or its employees or agents shall give any information, or make any representation, to any

applicant, where the agency or its employees or agents know, or reasonably should know, that the information or representation is false.

(g) No employment agency or its employees or agents shall knowingly withhold from a job applicant any information

material to a job to which that applicant is referred.

(h) No employment agent or its agents or employees shall engage in any conduct in the course of its business, which

constitutes a fraudulent, dishonest, or deceptive practice, whether or not the conduct is prohibited by this subchapter.

(i) No contracts, forms, or schedules used by employment agencies in their dealings with the public shall contain any

false, ambiguous, or misleading information.

11-11-225. Miscellaneous restrictions and requirements.

In addition to other provisions of this subchapter, the following provisions shall govern each and every employment agency.

(1) Every employment agent or agency shall display his or its license in a conspicuous place in the main office of the

agency. Managers and counselors shall display their licenses in a conspicuous place in their offices or work areas;

(2)(A) All advertising by an employment agency of any form or kind shall include the words "employment agency" or "personnel agency".

(B) Advertising for an employment position with the agency itself shall clearly convey the information that the job

position offered is with the employment agency publishing the advertisement;

(3) No employment agency or its agents or employees shall receive or require any applicant to execute any power of

attorney, assignment of wages or salary, or note authorizing the confession of judgment;

(4) No employment agent, by himself, or by his agents or employees shall solicit, persuade, or induce any employee

to leave any employment in which the employment agent or his agent has placed the employee, nor shall any employment agency or any of its agents or employees solicit, persuade, or induce any employer to discharge any employee, nor shall any employment agent, or his agents, or employees, divide, or offer to divide or share directly or indirectly, any fee, charge, or compensation received, or to be received, from an employee with any employer or persons in any way connected with the business thereof;

(5)(A) No employment agent, by himself, or by his agents or employees shall give or promise to give anything of intrinsic value to any employer or applicant for employment as an inducement to use the services of his employment agency.

(B) No fee shall be solicited or accepted as an application or registration fee by an employment agent for the

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purpose of registering any person as an applicant for employment;

(6) No employment agency or its agents or employees shall advertise or make a referral for any job position without having first obtained a bona fide job order therefor;

(7) No employment agency or its agents or employees shall refer an applicant for a job or job interview unless the applicant has been personally interviewed by the employment agency or its agents or employees or has corresponded with the employment agency with the specific purpose of securing employment through that employment agency;

(8)(A) Every employment agency shall inform the public by a conspicuous sign or poster that the employment agency is subject to the requirements of this subchapter, which is administered and enforced by the Department of Labor.

(B) The department shall prepare and distribute the sign or poster to be used by agencies to comply with this subdivision (8) of this section;

(9) No employment agency or its agents or employees shall knowingly send an applicant to any place where a strike, lockout, or other labor dispute exists;

(10) No agency shall use any trade name or business identity similar to, or reasonably likely to be confused with, the trade name or business identity of an existing agency or any governmental nonprofit employment agency;

(11) No employment agency shall refer an applicant to a situation, employment, or occupation prohibited by law;

(12) No employment agency shall charge a fee to an employee for any services other than actual placement of an applicant;

(13) No employment agency shall charge an applicant a fee for accepting employment with the employment agency or any subsidiary of that agency;

(14) Any information regarding an applicant's background or credit, from whatever source obtained, shall be used for

no purpose other than assisting the applicant in securing employment. However, an employment agency may use background and credit information regarding an applicant in determining whether to conduct placement services for the applicant if the applicant gives written authorization for securing the information and understands the purpose for which the information is secured;

(15) No employment agency or its agents or employees shall engage in any practice which discriminates against any

person on the basis of race, color, sex, age, religion, or national origin;

(16) Under no circumstances shall more than one (1) fee for any one (1) placement be charged any applicant;

(17) No contracts, forms, or schedules used by employment agencies shall contain any provisions in conflict with the

provisions of this subchapter; and

(18) All refunds due shall be made by the agency by cash, check, or money order promptly when due.

11-11-226. Designation of manager required.

(a) Every employment agency shall designate an agency manager at each office location of that agency, who shall be

responsible for the general management, administration, and operation of that office location.

(b) The agency manager must comply with the licensing requirements of §§ 11-11-210 - 11-11-212, 11-11-214, 11-

11-217, 11-11-218, 11-11-220(a)(1) and (b), and 11-11-226.

(c) Every employment agency must maintain an agency manager at each of its office locations.

11-11-227. Fee restrictions and requirements.

(a) Where employment lasts less than ninety (90) calendar days, regardless of the reason, no employment agency may

charge an employee a fee of more than one ninetieth (1/90th) of the permanent placement fee for each calendar day of the

employment. Under no circumstances shall the fee exceed twenty percent (20%) of an employee's actual gross earnings if

employment lasts less than thirty (30) days or forty percent (40%) of an employee's actual gross earnings if employment

lasts more than thirty (30) days but less than ninety (90) days.

(b)(1) When a promissory note is used by the agency, it shall be clearly identified as such and shall not be executed

until the placement is made.

(2) The defense of no or insufficient consideration shall be good as against a holder of any such employment

agency fee note.

(c)(1) Where a dispute concerning a fee exists, the Department of Labor may conduct an investigation to determine all

of the facts concerning the dispute. Thereafter, the Director of the Department of Labor shall issue a decision and order

resolving the dispute.

(2) Any person aggrieved by this decision and order may obtain review of this decision and order pursuant to §11-

11-222.

(d)(1) Any schedule of fees to be charged by an employment agency for its services shall be furnished to all applicants

upon making application with the agency.

(2)(A) The forms, fee schedules, and contracts utilized by an employment agency shall contain no ambiguous, 45

false, or misleading information.

(B) No contract or fee schedule shall contain smaller than eight point (8 pt.) type.

(e)(1) All fee schedules used in the business of an employment agency must be furnished to job applicants and fee-paying employers and shall state in dollars and cents the amount of any fee charged by the agency for its services.

(2) Percentages shall not be used by agencies in schedules of fees to be charged for their services, except where the annual salary for a job is twelve thousand dollars (\$12,000) or more.

(f) It shall be unlawful for any employment agency to impose, enforce, collect, or receive a fee for performance of any service for a job applicant, or for a prospective employer, unless the agency makes every reasonable effort to disclose the exact dollar amount of the fee to the applicant or prospective employer prior to commencement of employment of an applicant by an employer.

(g) Nothing in this section or this subchapter shall be construed to prohibit an employment agency from contracting with an employer on a fee-paid basis to pay the fee for the placement services for an employee without an actual job placement or to prohibit an agency from charging a fee to an employer for a retained services contract to search for applicants for an employer without an actual job placement.

11-11-228. Filing of fee schedule, forms, and contracts required.

(a) It shall be the duty of every employment agency to file with the Department of Labor a schedule of all fees, charges, and commissions which the agency expects to charge and collect for its service, together with a copy of all forms and contracts to be used in dealings with the public in the operation of its business.

(b) The fee schedules, contracts, and forms shall be filed with the department on the date of the agency's application for initial or renewal licensing under this subchapter.

(c) Any amendments or supplements to fee schedules, contracts, or forms filed with the department must be filed at least fifteen (15) days before the amendment or supplement is to become effective.

(d) It shall be unlawful for any employment agency to charge, demand, collect, or receive a greater compensation for any service performed by the agency than is specified in fee schedules filed with the department or than is specified by this subchapter.

11-11-229. Records required.

(a) It shall be the duty of every employment agency to keep a complete record of all orders for employees which are received from prospective employers. This record shall contain the date when the order was received, the name and address of the employer seeking the services of an employee, the name of the individual placing the order, the duties of

the position to be filled, the qualifications required of the employee, the salary or wages to be paid, and the probable duration of the job.

(b) It shall be the duty of every employment agency to keep a complete record of each applicant who is referred by the agency to an employer for a job interview. This record shall contain the date when the applicant was referred to a prospective employer for a job or interview, the name of the applicant, and the name of the firm to whom the applicant is referred.

(c)(1) It shall be the duty of every employment agency to keep a complete register called a "business transaction record", which shall consist of the name of the individual placed, the date of the placement, the name of the employer, starting date of position, starting salary, amount of fee charged, and remarks column.

(2) The remarks column will state the amount of any adjustment or refund made.

(d)(1) Prior to referral of any person to a job or interview or prior to placement of any job advertisement, an employment agency must have a current bona fide job order.

(2) It shall be the duty of every employment agency to maintain a copy of any job advertisement and the job order pertaining to any advertisement in a readily available record.

(e) All of the records listed in this section shall be kept in the employment agency office and shall be open during office hours to inspection by the Department of Labor and its duly authorized agents.

(f) No employment agent or his employee shall knowingly make any false entry or omission in the records.