

# 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 Division 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 the 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 the applicant has complied with the provisions of this section.

(3) The applicant shall, in the event of unfavorable action by the director, have the right of 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) "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;
- (2) "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;
- (3) [Repealed.]
- (4) [Repealed.]
- (5) "Employee" means a person performing or seeking to perform work or service of any kind or character for compensation;
- (6) "Employer" means a person employing or seeking to employ a person for compensation;
- (7)

**(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 paying 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 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; or

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

**(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)** "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; and

**(10)** "Person" means any individual, company, firm, association, partnership, or corporation.

### **11-11-203 – Penalty**

**(a)** The Director of the Division 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 that 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 division - Powers and duties**

**(a)** It shall be the duty of the Division 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 Division 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 the 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 or orders lawfully promulgated under this subchapter.

**(c)**

**(1)** Complaints against any person, employment agent, agency manager, or counselor may be made to the division 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 division.

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

**(4)** The director or his or her 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 or her 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 an investigation conducted by the director.

**(6)** If any person in proceedings before the director or in investigations conducted by the director disobeys or resists any lawful order or process issued by the director or his or her 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 Pulaski County Circuit Court.

**(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 or her authorized agent shall be paid the same fees and mileage paid to witnesses in the courts of this state.

**(d)**

**(1)** The director may prescribe such rules for the conduct of the business of private employment agencies as necessary to implement 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 pursuant to this subsection shall be carried out in compliance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

**(e)** The division shall have authority to investigate employment agents, agency managers, and counselors. The division 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.

**(f)** The division may seek to recover in a court of competent jurisdiction fees charged or collected in violation of this subchapter.

## **11-11-205 - 11-11-207 - [Repealed]**

### **11-11-208 - License required – Penalties**

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

(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 or she 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 of the Division of Labor, 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 Division 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 Division of Labor a written application on a form prescribed and furnished by the Director of the Division 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 Division of Labor may establish proof necessary to him or her 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 Division 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**

(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 Division of Labor may establish proof necessary to him or her 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 of the Division of Labor a completed application on a form prescribed and furnished by the Director of the Division of Labor.

(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.

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

(4) This application shall also contain such other information as the Director of the Division of Labor may prescribe.

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

(a)

(1) 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.

(2) The terms and conditions of the bond shall be approved by the Director of the Division of Labor.

**(3)** 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 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 or her own name upon the bond of the employment agency in any court of competent jurisdiction or in the Pulaski County Circuit Court.

**(2)**

**(A)** 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.

**(B)** Any claim so assigned may be enforced in the name of the assignee.

**(3)** Any remedies given by this section shall not be exclusive of any other remedy that would otherwise exist.

**(c)** Action on the bond required by this section may be maintained by the director in the name of the state in any court of competent jurisdiction or in the Pulaski County Circuit Court, 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 Division of Labor 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 subsection 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 of an application for a license as provided in this subchapter, the Director of the Division 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.

### **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 Division 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 of the Division of Labor, 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 Division of Labor for the recording of authorization for each change of office location authorized by this section.

### **11-11-216 - Examination for licenses**

**(a)**

**(1)**

**(A)** Before the Director of the Division of Labor issues a license to an applicant for a permanent employment agent's, permanent agency manager's, or permanent counselor's license, the applicant shall be required to successfully complete a written examination prepared by the director.

**(B)** The examination shall establish the competency of the applicant to:

**(i)** Operate and conduct an employment agency; or

**(ii)** 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 Division 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 division, 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; and

**(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. The 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 into the general fund of the State Treasury.

### **11-11-218 - Temporary licenses**

**(a)**

**(1)** The Director of the Division 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).

**(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 for 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 Division 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 Division of Labor and shall deliver or forward by mail the agent's license to the division. Failure to give notice, or failure to deliver such employment agent's license, shall be a violation of § 11-11-208.

### **(2)**

**(A)** When 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 Division of Labor shall provide by rule 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 the Division of Labor of any new member, principal, partner, officer, director, or shareholder.

### **(b)**

**(1)** If an agency manager terminates his or her employment with an employment agency by which he or she is employed, the agency shall notify the division, as soon as is reasonably possible, to enable the division 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 or her position with the employment agency.

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

## **11-11-221 - Issuance, refusal, suspension, or revocation of license – Grounds**

**(a)** The Director of the Division 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 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

(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 or orders 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 Division 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 or her and affords him or her an opportunity to be heard on the charges.

(2) At the time that 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 Administrative Procedure Act, § 25-15-201 et seq.

(4) The notice shall be sent by certified mail, return receipt requested, to the address of the person as shown on his or her 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 or her 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 or her.

(B)

(i) He or she shall be allowed to produce evidence and witnesses in his or her 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 Division of Labor 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 Division 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, 11-11-221, 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 Pulaski County Circuit Court or, if the aggrieved person is a nonresident of the state, in the Pulaski County Circuit Court.

**(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 Division of Labor.

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

**(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 or her findings as to the facts or make new findings, by reason of additional evidence 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 division 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 division of the cost of preparing and certifying the record, the circuit court in which the proceeding is pending, on 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 or 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 that 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, her, 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 herself, or by his or her agents or employees, shall solicit, persuade, or induce any employee to leave any employment in which the employment agent or his or her 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 or her 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 herself or by his or her 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 or her employment agency.

**(B)** No fee shall be solicited or accepted as an application or registration fee by an employment agent for the 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 Division of Labor.

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

**(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 that 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) When 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) When a dispute concerning a fee exists, the Division of Labor may conduct an investigation to determine all of the facts concerning the dispute. Thereafter, the Director of the Division 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, false, or misleading information.

(B) No contract or fee schedule shall contain smaller than eight-point 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 when 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 Division of Labor a schedule of all fees, charges, and commissions that 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 division 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 division 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 division 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 that 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, the starting date of the position, the starting salary, the amount of the fee charged, and the 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 Division of Labor and its duly authorized agents.

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