

LEGISLATIVE BILL 162

Approved by the Governor May 11, 1977

Introduced by Judiciary Committee, Barnett, 26, Chmn.; Reutzell, 15; Stoney, 4; Carsten, 2; Chambers, 11; Cullan, 49; Venditte, 7

AN ACT relating to labor; to amend sections 48-503 to 48-508, 48-510 to 48-513, 48-515, 48-516, 48-518 to 48-521, 48-523, 48-524, 48-1002, 48-1004, 48-1007, and 48-1008, Reissue Revised Statutes of Nebraska, 1943; to define terms; to change provisions for regulation of private employment agencies; to provide an unlawful employment practice; to increase powers of the Equal Opportunity Commission as prescribed; to change investigation procedures; to repeal the original sections, and also sections 48-501, 48-502, and 48-522, Reissue Revised Statutes of Nebraska, 1943; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. For purposes of sections 1 to 19 of this act, unless the context otherwise requires:

(1) Person shall mean natural persons, corporations, trusts, unincorporated associations, and partnerships;

(2) Private employment agency shall mean a person who for hire or with a view to profit shall undertake to secure employment for individuals where a fee or other valuable consideration is exacted, or attempted to be collected, directly from the employee; and

(3) The term fee shall mean any money or other valuable consideration paid or promised to be paid by an employee for services rendered or to be rendered by a private employment agency.

Sec. 2. That section 48-503, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-503. No person, firm or corporation in this state shall open, operate or maintain a private employment agency for hire or for help without first obtaining a license for the same from the Commissioner of Labor, and the license fee shall be one hundred dollars per annum for general employment agencies; ~~seventy-five dollars per annum for theatrical and entertainment~~

agencies, ~~and fifty dollars per annum for all other types of employment agencies,~~ payable in advance on May 1 of each year, and each license shall expire on April 30 of each year. When application is made by a firm or corporation, it must be verified by each member who will benefit from such license. The Commissioner of Labor may require evidence of the moral character of all applicants and make such investigation of the applicants as he deems necessary, and no license shall be issued to any person or persons except those of good moral character. No license shall be issued to any person or persons, if anyone financially interested in or who has managerial control of the proposed private employment agency has been convicted of a felony. ~~There shall be only three types of employment agency licenses issued, which~~ Such licenses will shall permit the private employment agency to maintain one office under such license and to conduct business only at that location. Every license shall contain a designation of the city, street, and number of the building in which the licensed parties conduct such private employment agency. In case of removal to another location during the period covered by such license, the commissioner shall be notified thirty days prior to the change of location and the license corrected accordingly. No such license shall be transferable.

Sec. 3. That section 48-504, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-504. The Commissioner of Labor shall require with each application for a license a surety bond in the penal sum of ten thousand dollars, ~~for general employment agencies, five thousand dollars for theatrical and entertainment agencies, and two thousand dollars for all other types of employment agencies, such~~ Such bond to shall be approved by the commissioner and conditioned that the obligor will not violate any of the duties, terms, conditions, provisions or requirements of sections ~~48-504 48-503~~ to 48-508, and 48-510 to ~~48-524 48-521, 48-523, and 48-524.~~ The commissioner is authorized to cause an action or actions to be brought on such bond in the name of the state for any violation of any of its conditions. The commissioner may approve actions on the bond by private parties. He may revoke upon a full hearing any license whenever in his judgment the party licensed shall have violated any of the provisions of said sections. In the prosecution of any inquiry, the commissioner is hereby empowered to administer oaths, subpoena witnesses, take depositions, compel the attendance of witnesses, and the production of books, accounts, papers, records, documents and testimony.

Sec. 4. That section 48-505, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-505. In case of refusal of any person to comply with the order of the Commissioner of Labor or subpoena issued by him, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, or refusal to permit any inspection as aforesaid the commissioner may cancel the license held by such person, firm or corporation refusing to comply with the order of the commissioner, ~~;-Provided;-that-the~~ The orders of the commissioner shall be in accord with the provisions of sections ~~48-504~~ 48-503 to 48-508, and 48-510 to ~~48-524~~ 48-521, 48-523, and 48-524. When such license shall be canceled, it shall not be reissued to such person, firm or corporation for a period of one year or less from the date of cancellation.

Sec. 5. That section 48-506, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-506. No private 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 Nebraska state employment service.

Sec. 6. That section 48-507, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-507. It shall be the duty of every licensed private employment agency to keep a register in which shall be entered the name and sex of every person for whom employment is secured, and the amount of fee charged. Such licensed private employment agency shall also enter into a register the name and address of every person for whom help or servants are secured. Every licensed private employment agency shall also keep a register or booklet in which shall be entered a copy of all advertisements used by it, with the name of the company to which each advertisement refers. Such registers shall at all reasonable hours be open to the inspection and examination of the Commissioner of Labor or his agent, and a copy of such facts shall be filed with the commissioner not later than the tenth day of each succeeding calendar month.

Sec. 7. That section 48-508, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-508. Every licensed private employment agency shall issue a record to each person securing employment or help showing the occupation, name, and address of the applicant, and the amount of fee charged for procuring the position, and such record shall also show the wages to be paid to the person securing employment, together with the name and address of the employer, the name and address of the private employment agency issuing such record, the nature of the employment offered, and if a strike or lockout is known to exist the fact shall be stated. The record shall be made upon forms prescribed by the Commissioner of Labor and the third copy shall be retained by the private employment agency issuing the same. The carbon copy of every record issued shall be mailed to the commissioner as prescribed in section 48-507.

Sec. 8. That section 48-510, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-510. The fee for procuring employment or help in all cases shall be clearly set out in the records provided for in section 48-508. The record shall plainly show the amount of the registration fee, and all commissions and expenses or compensations whatsoever to such licensed private employment agency for procuring employment or help. In case the party paying such fee fails to obtain employment specified, ~~and such failure shall not be the fault of such applicant for employment,~~ such licensed private employment agency shall repay the same to such person upon demand being made therefor. ~~Provided, that in cases where the person seeking employment is sent beyond the limits of the city in which such employment agency operates, such licensed agency shall repay in addition to the above the actual expenses incurred by reason of failure to receive employment, in all cases when it shall appear that the employment agency or employer made false representations.~~

Sec. 9. That section 48-511, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-511. Any private employment licensed agency, or agent thereof, who shall be guilty of dividing fees with any superintendent, manager, foreman or other employees of any person, company, corporation or association, for whom employees are furnished shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars or be imprisoned in the county jail for a period not exceeding three months at the discretion of the court. Upon conviction, his license shall be revoked

at once by the Commissioner of Labor.

Sec. 10. That section 48-512, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-512. No private employment agency shall knowingly send, or cause to be sent, any female help or servant to any place of bad repute, house of ill fame, or assignation house or to any house or place of amusement kept for immoral purposes. No such licensed private employment agency shall publish or cause to be published any false information, make any false promise concerning or relating to work or employment to anyone who shall register for employment, and no licensed private employment agency shall make any false entries in the register to be kept as herein provided. No private employment agency shall charge the applicant a service fee if any owner, manager, or employee of such private employment agency has an active interest in the business to which the applicant is being referred.

Sec. 11. That section 48-513, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-513. It shall be the duty of the Commissioner of Labor to enforce sections ~~48-507~~ 48-503 to 48-508 and 48-510 to 48-514. When informed of any violation thereof it shall be his duty to investigate the same, as hereinbefore provided, and he may institute criminal proceedings for enforcement of its penalties before any court of competent jurisdiction. Any person convicted of a violation of the provisions of said sections, not otherwise provided for, shall be guilty of a misdemeanor, and shall be fined not less than fifty dollars nor more than one hundred dollars or be imprisoned in the county jail for a period not to exceed three months. For a conviction of a second offense his license shall be revoked. ~~;-Provided;-that-any~~ Any person or persons who shall knowingly send any female help or servant to any place of bad repute, house of ill fame or assignation house, or to any house or place of amusement kept for immoral purposes, shall be punished by imprisonment for not less than thirty days nor more than three months and no license to operate an a private employment agency shall be issued to such party and any such existing license shall be permanently canceled.

Sec. 12. That section 48-515, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-515. No foreign labor agent, labor bureau or labor agency or other person or corporation domiciled in any other state or territory of the United States shall enter this state and attempt to hire, entice, or solicit or take from this state any common or agricultural workers, singly or in groups, for any purpose without first applying to the Commissioner of Labor for a license as an a private employment agency.

Sec. 13. That section 48-516, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-516. Any labor agent hiring, enticing or soliciting common or agricultural workers in this state for employment beyond this state, shall make monthly reports to the commissioner on the first day of each month covering the preceding month correctly showing the name and address of every representative, subagent, contractor, recruiter or solicitor engaged in any part of the work of that agency connected with the hiring, enticing or soliciting of common or agricultural workers in this state to be employed beyond the limits of this state, and correctly showing:

(1) The name, age, sex and address of each person solicited to be employed beyond the limits of this state;

(2) The name and address of the employer of every such person;

(3) The place where every such person is to be employed;

(4) The kind of work every such person is employed to do;

(5) The term of employment of every such person;

(6) The wages to be paid to every such person for his work; and

(7) Whether or not transportation is to be furnished, arranged for, or paid for any such common laborer or agricultural worker either leaving or returning to this state.

The commissioner shall cancel the license of every agent or private employment agency who or which fails to make and file such reports on or before the tenth day of each month for the preceding month in accordance with the cancellation provisions provided in section 48-505.

Sec. 14. That section 48-518, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-518. A registration fee not to exceed five dollars may be charged by such licensed private employment agency when such agency shall be of actual expense in advertising such individual applicant, or in looking up the reference of such applicant. In all such cases, a complete record shall be kept of all such references, which record shall, during all business hours, be open for the inspection of the Commissioner of Labor or any inspector appointed by the commissioner to make such inspections, and upon demand shall be subject to the inspection and examination by the applicant. For such registration fee a receipt shall be given to the applicant for employment or help, giving the name of such applicant, the date of payment, and the character of the position or help applied for, and the receipt shall have printed or stamped on the front thereof, in the English language, the name of the Commissioner of Labor and his address. Such registration fee shall be returned to the applicant on demand, after thirty days and within sixty days from the date of receipt, less the amount that has been actually expended by such licensed private employment agency for the applicant, and an itemized account of such expenditures shall be presented to the applicant on request at the time of returning the unused portion of such registration fee if no position or help has been furnished by the licensed private employment agency to and accepted by the applicant.

Sec. 15. That section 48-519, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-519. No ~~licensed-person-or--persons~~ private employment agency shall, as a condition to registering or obtaining employment for such applicant, require such applicant to subscribe to any publication or exact any fee, compensation, or reward other than the registration fee and a further service fee, based on a schedule of fees, which shall be prominently posted in the agency's place of business and filed with the Commissioner of Labor. A copy of all private employment agency contracts shall also be filed with the commissioner. Private employment agencies shall furnish each applicant with a copy of such applicant's contract. Each licensed private employment agency shall display at all times in a prominent place a printed card with a minimum height of twenty inches and a width of fourteen inches with each letter to be a minimum of one-fourth inch in height, which shall state the maximum service fee charge against

the first month's salary and where the applicant may contact the Commissioner of Labor or his agent. The service fee shall be payable at such time as may be agreed upon in writing, but not before the applicant has accepted employment.

Sec. 16. That section 48-520, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-520. No licensed private employment agency shall send out any applicant for employment without having obtained a written bona fide employment order therefor, ~~which shall state who will pay the service fee, and if on file which shall state the name and address of the prospective employer, the name of the individual authorizing the order, and the title, duties and salary range of the position, and stating who shall pay the service fee.~~ If it shall appear that no employment of the kind applied for existed at the place where such applicant was directed, such licensee shall reimburse such applicant, within five days after demand, for any sum paid by such applicant for transportation in going to and returning from such place, ~~and refund all fees paid by the applicant.~~

Sec. 17. That section 48-521, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-521. Every such licensed private employment agency shall give to every applicant for employment a card or printed paper containing the name of the applicant, the name and address of the employment agency, the name and address to whom the applicant is sent for employment, the type of employment offered by the employer, and who will be liable for the service fee. The employment agency shall retain a copy of such card or printed paper which shall be signed by the applicant for referrals for which the applicant shall assume the fee liability.

Sec. 18. That section 48-523, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-523. If employment furnished the applicant does not continue more than ninety days, through no fault of the employee, then all fees paid or pledged by the employee, with the exception of an amount equal to ten per cent of the gross earnings during the period of actual employment, shall be refunded by the private employment agency to the employee upon demand, ~~by such~~

licensed-agency: Whenever there are changes in the original service fee, the agency shall issue an amended record and mail a copy of such record to the Commissioner of Labor as prescribed in section 48-508.

Sec. 19. That section 48-524, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-524. The Commissioner of Labor shall determine through whose fault the employment did not continue for purposes of ~~sections--48-522--and~~ section 48-523.

Upon a finding by the Commissioner of Labor or by any court of competent jurisdiction that a private employment agency has violated any of the provisions of this act or has engaged in any unfair or deceptive practice in procuring employment for an applicant, such private employment agency shall be ordered to refund to the applicant all fees paid by the applicant, and any contract entered into with the private employment agency by the applicant shall be null and void.

Sec. 20. That section 48-1002, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1002. As used in sections 48-1001 to 48-1009, unless the context otherwise requires:

(1) Person shall include one or more individuals, partnerships, associations, labor organizations, corporations, business trusts, legal representatives, or any organized group of persons;

(2) Employer shall mean a person having in his employ twenty-five or more individuals, and any person acting for or in the interest of an employer, directly or indirectly, but such term does not include (a) the United States, (b) a corporation wholly owned by the government of the United States, or (c) any person or political entity acting with respect to any peace officer or firefighter;

(3) Labor organization shall mean any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment, or for other mutual aid or protection in connection with employment; ~~and~~

(4) Employee shall mean an individual employed by any employer; and =

(5) Employment agency shall mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person; but shall not include an agency of the United States, except that such terms shall include the United States Employment Service and the system of state and local employment services receiving federal assistance.

Sec. 21. That section 48-1004, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1004. (1) It shall be an unlawful employment practice for an employer:

(a) To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to his terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or

(b) To willfully utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against such individuals because of their age.

(2) It shall be an unlawful employment practice for any labor organization to so discriminate against any individual or to limit, segregate, or classify its membership in any way which would deprive or tend to deprive such individual of otherwise lawful employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, or would affect adversely his wages, hours, or employment.

(3) It shall be an unlawful employment practice for any employer or labor organization to discharge, expel or otherwise discriminate against any person, because he opposed any unlawful employment practice specified in sections 48-1001 to 48-1009 or has filed a charge or suit, testified, participated, or assisted in any proceeding under the provisions of sections 48-1001 to 48-1009.

(4) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against any individual because of such individual's age, or to classify or refer for employment any individual on the basis of his or her age.

Sec. 22. That section 48-1007, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1007. Sections 48-1001 to 48-1009 shall be administered by the Equal Opportunity Commission as established by section 48-1116. The commission shall have the power (1) to make delegations, to appoint such agents and employees and to pay for technical assistance, including legal assistance, on a fee-for-service basis, as it deems necessary to assist it in the performance of its functions under sections 48-1001 to 48-1009; (2) to cooperate with other federal, state, and local agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of sections 48-1001 to 48-1009; (3) to make investigations, to issue or cause to be served interrogatories, and to require keeping of records necessary or appropriate for the administration of sections 48-1001 to 48-1009; and (4) to bring civil action in its name in any court of competent jurisdiction against any person deemed to be violating any of the provisions of sections 48-1001 to 48-1009 to compel compliance with the provisions of sections 48-1001 to 48-1009 or to enjoin any such person from continuing any practice that is deemed to be in violation of sections 48-1001 to 48-1009. The commission may seek judicial enforcement through the office of the Attorney General to require the answering of interrogatories and to gain access to evidence or records relevant to the charge under investigation.

Sec. 23. That section 48-1008, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

48-1008. Any person aggrieved by a suspected violation of the provisions of sections 48-1001 to 48-1009 shall file with the Equal Opportunity Commission a formal complaint in such manner and form prescribed by the commission. The commission shall have a period of thirty days to make an investigation and initiate an action to enforce the rights of such employee under the provisions of sections 48-1001 to 48-1009. ~~if the commission does not initiate such action within the thirty-day period, the~~ Any person aggrieved may bring a

civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of sections 48-1001 to 48-1009. Filing of an action by either the commission or the person aggrieved shall be a bar to the filing of the action by the other.

Sec. 24. That original sections 48-503 to 48-508, 48-510 to 48-513, 48-515, 48-516, 48-518 to 48-521, 48-523, 48-524, 48-1002, 48-1004, 48-1007, and 48-1008, Reissue Revised Statutes of Nebraska, 1943, and also sections 48-501, 48-502, and 48-522, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 25. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.