

CHAPTER 839

H.B. No. 1261

AN ACT

relating to the regulation of certain personnel services; providing a civil penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1(5), Chapter 263, Acts of the 66th Legislature, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) "Personnel service" means a person who for a fee or without a fee offers or attempts to procure directly or indirectly permanent employment for an employee or procures or attempts to procure a permanent employee for an employer. *The term does not include a newspaper of general circulation or other publication that primarily communicates information other than information relating to employment positions and that does not purport to adapt the information provided to the needs or desires of an individual applicant. The term includes a person who offers the facilities of or advertises as:*

- (A) an executive search or consulting service;*
- (B) an out-placement service;*
- (C) an overseas placement service;*
- (D) a job listing service;*
- (E) a personnel consulting service; or*
- (F) a resume service that provides job market investigation, research, or evaluation.*

SECTION 2. Section 2(a), Chapter 263, Acts of the 66th Legislature, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes), is amended to read as follows:

- (a) This Act does not apply to:
 - (1) a person regulated by Chapter 234, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a-5, Vernon's Texas Civil Statutes);
 - (2) a personnel service operated by this state, the United States government, or any municipal government of this state;
 - (3) a personnel service operated *without assessment of a fee* by a person in conjunction with the person's own business for the exclusive purpose of employing help for use in *that [the] business; [or]*
 - (4) a labor union; *or*
 - (5) *a professional counselor licensed under the Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes).*

SECTION 3. Section 3(a), Chapter 263, Acts of the 66th Legislature, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A person who acts as a personnel service in the capacity of an owner, operator of the service, counselor, or agent or employee of the service may not:

(1) *notwithstanding any refund policy*, impose any ~~[a fee for the registration of an applicant for employment or other]~~ fee on an applicant *for employment until the applicant has accepted an offer of employment resulting from* ~~[except for the furnishing of]~~ an employment referral made by the personnel service ~~[that results in the applicant obtaining employment]~~;

(2) engage or attempt to engage in splitting or sharing with an employer, an agent or other employee of an employer, or other person to whom the personnel service has furnished services a payment received by a personnel service from a person seeking employment or from an employer;

(3) make, give, or cause to be made or given to any applicant for employment any false promise, misrepresentation, or misleading statement or information;

(4) refer any applicant for employment except on a valid job order for the referral;

(5) advertise a position without there first being a valid job order verifiable by the employer;

(6) procure or attempt to procure the discharge of a person from his or her current employment;

(7) induce, solicit, or attempt to induce or solicit an employee to terminate his or her employment in order to obtain new employment if the employee's present employment was obtained by the efforts of the inducing or soliciting personnel service or any other personnel service having a common ownership with the inducing or soliciting personnel service unless the employee initiates the new contact;

(8) deliver, disclose, distribute, receive, or otherwise communicate any service file or any information contained in a service file to or from a person except as authorized by the personnel service owning the file;

(9) advertise in any medium, including a newspaper, trade publication, billboard, radio, television, card, printed notice, circular, contract, letterhead, and any other material made for public distribution, except an envelope, without clearly stating that the advertisement is by a firm providing a private personnel service;

(10) refer an applicant to a place where a strike or lockout exists without first furnishing the applicant a written statement of the existence of the strike or lockout if the personnel service has knowledge of the fact of the strike or lockout;

(11) refer an applicant to employment deleterious to his or her health or morals if the personnel service has knowledge of the deleterious condition of the employment; or

(12) charge a fee *to an applicant* of more than 20 percent of the applicant's gross wages if the position that the applicant accepted as a result of a referral by a personnel service lasts less than 30 calendar days and if the applicant leaves the position with good cause.

SECTION 4. Section 6, Chapter 263, Acts of the 66th Legislature, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. **REMEDIES** ~~[CIVIL REMEDY]~~. (a) A person who violates a provision of this Act is liable to a person adversely affected by the violation for the amount of all actual damages produced by the violation. In the event a person adversely affected establishes that a violation was committed knowingly, the person shall be awarded three times the amount of actual damages. In this subsection, "knowingly" means actual awareness of the act or practice that is the alleged violation, but actual awareness may be inferred if objective manifestations indicate that a person acted with actual awareness.

(b) In an action filed under this section, a plaintiff who prevails shall receive court costs and attorney's fees reasonable in relationship to the amount of reasonably necessary work expended.

(c) In an action filed under this section, a plaintiff may seek and the court in its discretion may grant:

- (1) an order enjoining the defendant in the suit from violating this Act;
- (2) any order necessary to restore to the person any property acquired by the defendant in the suit in violation of this Act; or
- (3) other relief that the court considers proper, including the appointment of a receiver if the court's judgment against the defendant in the suit is not satisfied within three months after the date of the final judgment, the revocation of a certificate authorizing the defendant in the suit to engage in business in this state, or an order enjoining the defendant in the suit from acting as a personnel service.

(d) If a court finds that a civil action filed under this section is groundless and brought in bad faith or for the purpose of harassment, the court may award court costs and reasonable attorney's fees to the defendant.

(e) *A violation of this Act is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code. A public or private right or remedy authorized by the Deceptive Trade Practices-Consumer Protection Act (Subchapter E, Chapter 17, Business & Commerce Code) may be used to enforce this Act.*

(f) This Act does not affect any public or private remedy or enforcement power available under other laws.

SECTION 5. Chapter 263, Acts of the 66th Legislature, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes), is amended by adding Sections 6A and 6B to read as follows:

Sec. 6A. ENFORCEMENT; INVESTIGATION; HEARING. (a) The commissioner shall enforce Section 3(a)(1) of this Act and may investigate any personnel service as necessary to enforce that prohibition. On request the attorney general shall assist the commissioner.

(b) A person by sworn affidavit may file a complaint alleging a violation of Section 3(a)(1) of this Act with the commissioner. The commissioner shall investigate the alleged violation on receipt of the complaint. On receipt of a complaint, the commissioner may inspect any records relevant to the complaint and may subpoena those records and any necessary witnesses.

(c) If, as a result of an investigation, the commissioner determines that a violation may have occurred, the commissioner shall hold a hearing in the manner provided for a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes). The hearing must be held not later than the 45th day after the date on which the complaint is filed with the commissioner. The commissioner shall render a decision on the alleged violation not later than the eighth day after the date on which the hearing ends.

(d) If, after the hearing, the commissioner determines that the personnel service has violated Section 3(a)(1) of this Act, the commissioner may, as appropriate:

- (1) issue a warning to the personnel service; or*
- (2) suspend or revoke the certificate of authority issued to the personnel service under Section 7 of this Act.*

(e) The commissioner or the attorney general may bring an action to enjoin a violation of this Act. Venue for the action lies in the county in which the violation occurred.

Sec. 6B. DAMAGES; PENALTY. (a) If, after a hearing conducted under Section 6A of this Act, the commissioner determines that a personnel service has violated Section 3(a)(1) of this Act, the commissioner may award the complainant damages in an amount equal to the amount of the fee charged by the personnel service. The commissioner may also impose a penalty on the personnel service equal to twice that amount, which shall be deposited in the state treasury to the credit of the general revenue fund.

(b) A penalty imposed under this section is in lieu of a criminal penalty provided under this Act for a violation of Section 3(a)(1) of this Act. Damages otherwise recoverable in a suit under Section 6 of this Act are subject to reduction by the amount of any damage award under this section based on the same conduct.

SECTION 6. Sections 7(b), (e), and (f), Chapter 263, Acts of the 66th Legislature, 1979 (Article 5221a-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The notice shall be accepted by the commissioner, and on payment of a filing fee, the commissioner shall issue to the owner a certificate of authority to do business as a personnel service in this state not later than the 15th day after the day of the filing. The commissioner shall set the filing fee at an amount that is reasonable and adequate to pay administrative and enforcement costs, not to exceed \$100.

(e) Renewals of the certificate of authority shall be issued by the commissioner on the filing by an owner of a notice containing the same information specified in Subsection (a) of this section and on the receipt by the commissioner of a filing fee. The commissioner shall set the filing fee at an amount that is reasonable and adequate to pay administrative and enforcement costs, not to exceed \$100.

(f) If the commissioner revokes a certificate of authority under Section 6A of this Act, the personnel service whose certificate is revoked and any owner of that personnel service are not eligible to apply for a new certificate until the expiration of three years from the date of the revocation [Each person who holds on the effective date of this Act a license under the terms of Chapter 245, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 5221a-6, Vernon's Texas Civil Statutes), must file the notice required by this section not later than the 60th day after the effective date of this Act if the person is required to do so by this Act. The commissioner shall notify these persons of this Act and shall furnish, not later than the 30th day after the effective date of this Act, the persons with the forms necessary for filing in compliance with this section].

SECTION 7. This Act takes effect September 1, 1987, and applies only to a violation occurring on or after that date. A violation occurring before that date is covered by the law in effect on the date that the violation occurred, and the prior law is continued in effect for that purpose.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 12, 1987, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1261 on May 30, 1987, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1261 on June 1, 1987, by a non-record vote. Passed by the Senate, with amendments, on May 29, 1987, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1261 on June 1, 1987, by a viva-voce vote.

Approved June 20, 1987.

Effective Sept. 1, 1987.