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February 16, 2017

SENATE BILL NO. 152

By: Pugh of the Senate

and

Osburn (Mike) of the House

An Act relating to labor; amending 40 O.S. 2011, Sections 46, 52, 55 and 57, which relate to employer not fulfilling contracts, definitions, rules and enforcement; modifying language; modifying definitions; deleting certain duties of the Commissioner of Labor; making certain enforcement through the court, district attorney or attorney general; repealing 40 O.S. 2011, Sections 35, 38 and 53, which relate to duty to report fees and fines, witnesses and licenses; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 40 O.S. 2011, Section 46, is amended to read as follows:

Section 46. ~~The Commissioner of Labor shall~~ Any court of
competent jurisdiction may, after having determined ~~by investigation~~
that any employer in this state is not fulfilling contracts made
through employment agents, order all employment agents in the state
to refuse further service to such employer. ~~Any employment agent~~

1 ~~violating this section shall be subject to the penalties as provided~~
2 ~~in Section Two (2) and Twelve (12) of this act.~~

3 SECTION 2. AMENDATORY 40 O.S. 2011, Section 52, is
4 amended to read as follows:

5 Section 52. For the purpose of and when used in Section 54 et
6 seq. of this act title:

7 ~~(a) The "Administrator" of this act shall be the Commissioner of~~
8 ~~Labor.~~

9 ~~(b) "Director" shall mean the Deputy appointed by the~~
10 ~~Administrator to supervise administration of this act.~~

11 ~~(c) 1. "Employee", as used in this act, shall mean~~ means any
12 person performing or applying for work or service of any kind or
13 character for hire.

14 ~~(d) 2. "Employer" shall mean~~ means any person employing or
15 seeking to employ any person for hire.

16 ~~(e) 3. "Fees" shall mean~~ means anything of value, including any
17 money or other valuable consideration exacted, charged, collected or
18 received directly or indirectly, or paid or promised to be paid for
19 any services or act described or enumerated in subsection (g) of
20 this section.

21 ~~(f) 4. "Employment" shall mean~~ means the act of employing or
22 state of being employed, engaged, or hired.

23 ~~(g) 5. "Private employment agency" shall mean~~ means any
24 business operated in this state by any person, firm or corporation

1 for profit which secures employment or by any form of advertising
2 holds itself out to applicants as able to secure employment or to
3 provide information or service of any kind purporting to promote,
4 lead to or result in employment for the applicant with any employer
5 other than itself, where any applicant may become liable for the
6 payment of a fee to the private employment agency, either directly
7 or indirectly. "Private employment agency" does not include:

8 ~~(1) Any~~

9 a. any educational, religious, charitable, fraternal or
10 benevolent organization which charges no fee for
11 services rendered in securing employment or providing
12 information about employment; ~~or~~

13 ~~(2) Any~~

14 b. any employment service operated by this state, the
15 Government of the United States, or any city, county,
16 or town, or any agency thereof; ~~or~~

17 ~~(3) Any~~

18 c. any temporary help service that at no time advertises
19 or represents that its employee, with the approval of
20 the temporary help service, may be employed by one of
21 its client companies on a permanent basis; ~~or~~

22 ~~(4) Any~~

23 d. any newspaper of general circulation or other business
24 engaged primarily in communicating information that

1 does not purport to adapt the information provided to
2 the needs or desires of an individual subscriber; ~~or~~

3 ~~(5) Employment~~

4 e. employment offices that charge no fee to the applicant
5 other than union dues or to the employer and which are
6 used solely for the hiring of employees under a valid
7 union contract by the employer subscribing to this
8 contract; ~~or~~

9 ~~(6) Any~~

10 f. any organization that charges fees only for services
11 other than securing employment, provided that such
12 services are performed pursuant to a contract which
13 includes a statement, in a type size no smaller than
14 ten point, directly above the place for the signature
15 of the client that reads as follows: "I have read and
16 received a copy of this contract which I understand
17 makes me legally obligated to pay a fee, I further
18 understand that this contract does not guarantee
19 employment"; ~~or~~

20 ~~(7) Resume~~

21 g. resume services whose service includes only the
22 preparation and production of resumes, and does not
23 purport to offer services that will result in
24 employment; or

~~(8)~~ A

h. a person employing individuals to render part-time or temporary personal 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, state and federal unemployment insurance, carries workers' compensation insurance as required by state law, and has responsibility for the acts of his employees while rendering services to or under the direction of a third person.

~~(h)~~ 6. "Temporary employment" ~~shall mean~~ means any period of employment terminating at any time within sixty (60) days from date of employment.

~~(i)~~ 7. "Permanent employment" ~~shall mean~~ means all employment exceeding sixty (60) days duration.

~~(j)~~ 8. "Person" ~~shall mean~~ means any individual, copartnership, corporation, or other legal entity.

SECTION 3. AMENDATORY 40 O.S. 2011, Section 55, is amended to read as follows:

Section 55. ~~(a)~~ A. Every employment agency shall enter into a written agreement with every applicant for services to be rendered and the time and method of payment, and on which there shall appear the definition of "Temporary Employment", "Permanent Employment" and

1 "Method of Payment". Provided, that nothing herein shall be
2 construed to prohibit an employment agency from making arrangements
3 by wire or telephone without said employee having first entered into
4 a written agreement with the agency; and provided further, if by
5 oversight or intention an applicant fails to sign an employment
6 contract, but is placed and accepts such employment, the employment
7 agency shall be entitled to its fee for such placement. Every
8 employment agency shall provide the applicant with a copy of any
9 written agreement between the applicant and the agency. All
10 contracts or agreements shall clearly state the fee and in no case
11 shall the employment agency collect more than the stated fee or
12 agreed percentage of the first year's total income.

13 ~~(b)~~ B. In all instances wherein permanent employment is
14 terminated within the definition of temporary employment, every
15 employment agency shall give to every person from whom an
16 overpayment of fee has been received, if requested within six (6)
17 months of such termination, a refund in the amount of such
18 overpayment, such refund to be made promptly within ten (10) days
19 following the agency's receipt of verification from the employer of
20 the inclusive dates of employment and the total gross earnings of
21 the employee. This subsection shall not apply to any employment
22 agency acting as a search consultant that is retained and
23 compensated solely by the employer on a retainer or consulting
24 basis.

1 ~~(c)~~ C. Every employment agency shall give to every person from
2 whom a payment is received for services or assistance rendered or to
3 be rendered a receipt bearing the name and address of the employment
4 agency, the name of the employee, amount of the payment, date of
5 payment, and for what it is paid. Each such receipt shall be
6 numbered and bound in duplicate form. The duplicate copy shall be
7 kept for two (2) years at the office of the employment agency.

8 ~~(d)~~ D. A record shall be kept of the name and address of every
9 employee accepting employment, the name and address of the employer
10 with whom employment is accepted, the nature of the employment, the
11 rate of wage or salary to be paid the employee, the amount of the
12 employment agency's service charge, the dates and amounts of
13 payments, the date and amount of refund, if any, and for what,
14 together with a space for remarks under which shall be recorded
15 anything of an individual nature to amplify the foregoing account or
16 record and as information in the event of any question arising
17 concerning the transaction. Such records shall be open to
18 inspection by ~~the Administrator or Director during business hours,~~
19 ~~at the address where the employment agency is conducted,~~ any court
20 of competent jurisdiction for the purpose of enforcing the
21 provisions of Section 54 et seq. of this act title. The

22 ~~Administrator may also by rules and regulations require reports from~~
23 ~~all agencies giving information on job placements, monthly or~~
24 ~~quarterly, both within and without the state, and classified by type~~

1 ~~of employment, to conform generally with employment data gathered~~
2 ~~and published by the Oklahoma Employment Security Commission.~~

3 ~~(e) The Administrator may require of the employment agency~~
4 ~~against whom a written complaint is made, a detailed account in~~
5 ~~writing, under oath, of the transaction referred to in the~~
6 ~~complaint.~~

7 ~~(f)~~ E. No employment agency shall direct an applicant to
8 employment without having obtained, either orally or in writing,
9 permission or authorization of the employer. No applicant for
10 employment shall be required by any agency to list prospective
11 employers to whom he shall previously have been referred by other
12 agencies.

13 ~~(g)~~ F. No applicant for employment shall knowingly make false
14 or misleading statements to an employment agency regarding age,
15 education, training, experience or references; and no employment
16 agency shall be held responsible for misinformation given it by an
17 applicant and transmitted by it in good faith to an employer.

18 ~~(h)~~ G. No employment agency shall advertise openings for which
19 it does not hold orders from employers or knowingly cause to be
20 printed, published or circulated misleading, false or fraudulent
21 information about employment opportunities.

22 ~~(i)~~ H. Other than the prescribed placement fee, no employment
23 agency shall require either the employee or employer to contribute
24 to the cost of its employment-related services, advertising, or

1 incidental expenses. This subsection shall not apply to any
2 employment agency acting as a search consultant that is retained and
3 compensated solely by the employer on a retainer or consulting
4 basis.

5 ~~(j)~~ I. No employment agency shall place, or cause to be placed,
6 promotional advertising in any media without licensee's
7 identification as to agency and address.

8 ~~(k)~~ J. No employment agency shall send any person to a
9 prospective employer who is conducting a "lockout" against all or
10 part of his employees, or whose employees or a part of them are out
11 on strike, without first apprising said person of the existence of
12 such lockout or strike.

13 ~~(l)~~ K. Any licensed agency, or agent thereof, who shall be
14 guilty of dividing fees with any superintendent, manager, foreman or
15 other employees of any person, company, corporation or association
16 for whom employees are furnished, shall be guilty of a misdemeanor
17 and, upon conviction, shall be punished as provided in Section 57 of
18 this title.

19 ~~(m)~~ L. No licensed agency shall furnish employment to or refer
20 any child to any vocation or establishment in violation of the laws
21 regulating the labor of children or their compulsory attendance at
22 school.

23 ~~(n)~~ M. No employment agency shall discriminate in the
24 employment of its personnel because of the race, national origin,

1 sex or religious belief of the applicant seeking employment with the
2 agency.

3 SECTION 4. AMENDATORY 40 O.S. 2011, Section 57, is
4 amended to read as follows:

5 Section 57. ~~It shall be the duty of the Administrator and/or~~
6 ~~Director to enforce the provisions of this act. When informed of~~
7 ~~any violation thereof it shall be his duty to investigate same, and~~
8 ~~he may institute~~ Any applicant or employee may seek criminal
9 proceedings for enforcement of Section 54 et seq. of this act title
10 ~~or apply to any court of competent jurisdiction and/or the~~ through
11 request made to any district attorney or the Attorney General in
12 ~~order to seek injunctive relief on behalf of the State of Oklahoma.~~
13 ~~In order to make more effective the foregoing statutory provisions~~
14 ~~and rules and regulations, the Administrator is hereby authorized to~~
15 ~~prepare and promulgate such rules and regulations as may from time~~
16 ~~to time be deemed necessary, not inconsistent with the provisions of~~
17 ~~this act. A violation of such rules and regulations shall be deemed~~
18 ~~to be a violation of this act, and any~~ Any person convicted of
19 violating the provisions of Section 54 et seq. of this act title
20 shall be guilty of a misdemeanor and shall be fined not less than
21 Fifty Dollars (\$50.00), nor more than One Hundred Dollars (\$100.00),
22 or the fee charged for the service, whichever is greater, for each
23 offense, or be imprisoned in the county jail for a period of not
24

1 exceeding six (6) months, or both such fine and imprisonment, at the
2 discretion of the court.

3 SECTION 5. REPEALER 40 O.S. 2011, Sections 35, 38 and
4 53, are hereby repealed.

5 SECTION 6. This act shall become effective November 1, 2017.

6 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS, COMMERCE AND TOURISM
7 February 16, 2017 - DO PASS
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