

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2079
(Industry, Business and Labor Committee)
(At the request of the Labor Commissioner)

AN ACT to amend and reenact subsection 4 of section 34-13-01, sections 34-13-03 and 34-13-12, subsection 2 of section 34-13-13.1, and subsection 1 of section 34-13-15 of the North Dakota Century Code, relating to definition of employment agent or employment agency and licensure of employment agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 34-13-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Employment agent" or "employment agency" means any person, firm, corporation, limited liability company, or association in this state engaged for hire or compensation in the business of furnishing:
 - a. Persons seeking employment or changing employment, with information or other service enabling or tending to enable such persons to procure employment, by or with employers, other than such employment agent; or
 - b. Any other person, firm, corporation, limited liability company, or association who may be seeking to employ or may be in the market for help of any kind, with information enabling or tending to enable such other person, firm, corporation, limited liability company, or association to procure such help.

The term "employment agent" or "employment agency" does not include any person, firm, corporation, limited liability company, or association employing individuals to render part-time or temporary services to or for a third person, if the person, firm, corporation, limited liability company, or association employing the individuals, in addition to wages or salaries, pays social security and unemployment insurance taxes, provides workers' compensation coverage, and is responsible for the acts of the employees while rendering services to or for a third person. The term "employment agent" or "employment agency" does not include a person, firm, corporation, limited liability company, or association charging service fees or any other charges exclusively to employers.

SECTION 2. AMENDMENT. Section 34-13-03 of the North Dakota Century Code is amended and reenacted as follows:

34-13-03. License application - Schedule of fees - License issuance and revocation.

Annually, every applicant for a license shall file with the commissioner a written application stating the name and address of the applicant, the street and number of the building in which the employment agency is to be maintained, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application must also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license and must be signed by the applicant and sworn to before a notary public. If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation and must be signed and sworn to by the president and treasurer thereof. If the applicant is a limited liability company, the application must state the names and addresses of the managers and governors of the limited liability company and must be signed and sworn to by the president and treasurer thereof. If the applicant is a partnership, the application must also state the

names and addresses of all partners therein and must be signed and sworn to by ~~all of them~~ the managing partner or partners. The application must also state whether or not the applicant is, at the time of making application, or has at any previous time been, engaged or interested in, or employed by anyone engaged in, the business of conducting an employment agency, either in this state or any other, and if so, when and where. The application must also give as reference the names and addresses of at least three persons of reputed business or professional integrity, located within the state. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the commissioner a schedule of the fees or charges to be collected by such employment agent for any services rendered, together with all rules and regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such changes, with the commissioner. It is unlawful for any employment agent to charge, demand, collect, or receive a greater compensation for any service performed by the agent than is specified in such schedule filed with the commissioner.

The commissioner may issue a license to an employment agent and refuse to issue a license if, after due investigation, the commissioner finds that the character of the applicant makes the applicant unfit to be an employment agent, or when the premises for conducting the business of an employment agent are found to be unfit. The commissioner may revoke a license upon due notice to the holder of the license and upon due cause. Failure to comply with the duties, terms, conditions, or provisions of this chapter, or any lawful orders of the commissioner is due cause to revoke a license.

SECTION 3. AMENDMENT. Section 34-13-12 of the North Dakota Century Code is amended and reenacted as follows:

34-13-12. Schedule of charges posted and printed on receipts - Sections of law posted - Information given to applicant for employment. Every employment agent possessing a valid license shall post in a conspicuous place in a room used for business purposes in the employment office and which is open to the public, a schedule showing the amount of the service charges to be made to ~~either employees, employers, or both~~. The amount collected may not exceed the schedule of charges indicated.

A licensed employment agent shall post in a conspicuous place in a room used for business purposes in the employment office a copy of sections 34-13-12 and 34-13-15, provided by the commissioner.

No employment agent holding a license may direct any applicant to apply for employment at any place outside of the office of such employment agent without first giving to such applicant, in written form, the name and address of the employment agent, the name of the applicant, the name and address of the person to whom the applicant is referred, and the kind of employment supposed to be obtainable at such place. Nothing herein may be construed to prohibit an employment agent from directing an applicant by telephone to apply for employment, but such telephone message must be confirmed in writing by the employment agent within twenty-four hours after the telephone conversation, and a ~~carbon~~ copy of such confirmation must be kept on file at the place of business of the employment agent for a period of one year.

SECTION 4. AMENDMENT. Subsection 2 of section 34-13-13.1 of the North Dakota Century Code is amended and reenacted as follows:

- ~~This section applies to all licensees.~~ Every licensee employment agency shall submit copies of all contracts and fee schedules used by such the agency or agent to the commissioner of labor for approval. No contract or fee between a licensee an employment agency and ~~an employer~~ or an employee is valid without the commissioner's approval. In approving or disapproving such contracts and fees, the commissioner shall issue a written determination. This determination is subject to review and appeal under chapter 28-32.

SECTION 5. AMENDMENT. Subsection 1 of section 34-13-15 of the North Dakota Century Code is amended and reenacted as follows:

1. Every license, ~~of whatever classification,~~ must be hung in a conspicuous place in the main office of the employment agency.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2079.

Senate Vote: Yeas 47 Nays 0 Absent 0

House Vote: Yeas 92 Nays 0 Absent 2

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,
at _____ o'clock _____ M.

Secretary of State