CHAPTER 34-13
LICENSING EMPLOYMENT AGENTS AND AGENCIES

34-13-01. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the labor commissioner.
2. "Employee" means any individual, whether employed or unemployed, seeking or entering into any arrangement for employment or change of employment through the medium of service of an employment agent.
3. "Employer" means any individual, firm, corporation, limited liability company, or association employing or seeking to enter into an arrangement to employ any individual through the medium or service of an employment agent.
4. "Employment agent" or "employment agency":
   a. Means any individual, firm, corporation, limited liability company, or association in this state engaged for hire or compensation in the business of furnishing:
      (1) Individuals seeking employment or changing employment, with information or other service enabling or tending to enable such individuals to procure employment, by or with employers, other than such employment agent; or
      (2) Any other individual, firm, corporation, limited liability company, or association that 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 individual, firm, corporation, limited liability company, or association to procure such help.
   b. Does not include:
      (1) An individual, firm, corporation, limited liability company, or association employing individuals to render part-time or temporary services to or for a third person, if the individual, firm, corporation, limited liability company, or association employing the individuals, in addition to wages or salaries, pays social security and unemployment insurance taxes, provides workforce safety and insurance coverage, and is responsible for the acts of the employees while rendering services to or for a third person.
      (2) An individual, firm, corporation, limited liability company, or association charging service fees or any other charges exclusively to employers.
      (3) An individual, firm, corporation, limited liability company, or association licensed or certified by the department of health and human services to provide employment related services, to the extent the employment-related services are being provided for the clientele identified by the department in the issuance of the license or certificate.
5. "Gross misconduct" means misconduct involving assault and battery, the malicious destruction of property, or the theft of money or property.

34-13-02. License required - Penalty.

A person may not open or carry on an employment agency if that person has a physical presence or location within the state, unless that person first procures a license from the commissioner. A person opening or conducting any such agency without first procuring a license is guilty of a class B misdemeanor.

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 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 charges, 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.

34-13-04. License term and fee.

All such licenses must be issued for a period of one year only, and the annual fees must be paid to the commissioner who shall promptly deliver them to the state treasurer, who shall deposit all such moneys in the general fund. The annual fee for such a license is two hundred dollars.

34-13-05. Applicant to furnish bond.

Every application for a license must be accompanied by a bond in the penal sum of five thousand dollars, with one or more sureties or a duly authorized surety company, to be approved by the commissioner and filed in the commissioner's office, conditioned that the agent will conform to and not violate any of the terms or requirements of this chapter or violate the covenants of any contract made by such agent in the conduct of said business. Action on this bond may be brought by and prosecuted in the name of any person damaged by any breach or any condition thereof, and successive actions may be maintained thereon.

34-13-06. Form and contents of license.

After an application for a license has been granted, a license must be issued to the applicant which must state the name of the employment agent, and, if a corporation, the names of the officers, if a limited liability company, the names of the managers, if a partnership, the names of the partners, the location of the office where the business is to be conducted, and the name of the person who is to be charged with the general management of the business. The license must also be numbered and dated.

34-13-07. Duration of license.

Every license, unless previously revoked, remains in force until one year after its issue, and every employment agent shall, upon payment of the amount of the license fee required and the

filing of a new bond or an authenticated certificate continuing a bond previously approved by the commissioner, have issued to it a license for the ensuing year, unless the commissioner refuses to do so for any of the reasons stated in this chapter.

34-13-08. Suspension or revocation of license.

If the commissioner finds that the employment agent has violated any of the provisions of this chapter, or has acted dishonestly in connection with the agent's business, or has improperly conducted the agent's business, or that any other good and sufficient reason exists within the meaning and purpose of this chapter, the commissioner may suspend or revoke the employment agent's license, or refuse to grant a new license to the employment agent upon the termination thereof; but in any case no such action may be taken until a written notice has been sent to the employment agent specifying the charges against the employment agent and the employment agent has been given a hearing, if the employment agent requests, and a reasonable opportunity to disprove or explain the charges.

34-13-09. Transfer of license - Consent to others becoming connected with licensee.

No license granted under the terms of this chapter is transferable, except with the consent of the commissioner. No employment agent may permit any person not mentioned in the license to become connected with the business as a partner, as an active officer of a licensed corporation, or as an active manager of a licensed limited liability company unless the consent of the commissioner is first obtained. Such consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question had been mentioned therein. If such consent is given, the names of the persons so becoming connected with the employment agency must be endorsed upon the license and, if such license is renewed, must be substituted for or added to the names of the persons originally mentioned therein.

34-13-10. Place of business.

No employment agent may open, conduct, or maintain an employment agency at any other place than that specified in the license without first obtaining the consent of the commissioner. Such consent may be withheld for any reason for which an original application might have been rejected, if such place had been mentioned therein. If such consent is given, it must be endorsed upon the license and, if such license is renewed, such other place must be substituted for the place originally named in the license. So long as any employment agent continues to act as such under the person's license, the employment agent shall maintain and keep open an office or place of business at the place specified in the license.

34-13-11. License classifications.

Repealed by S.L. 1995, ch. 341, § 6.

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 employees. 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 copy of such confirmation must be kept on file at the place of business of the employment agent for a period of one year.

34-13-13. Contract with applicant for employment.

Every licensed employment agent shall contract, in writing, with every applicant for employment for services to be rendered to the applicant by the employment agent, which contract must contain the date, the name and address of the employment agency, the name of the employment agent, the service charge to be made to the applicant, and the time and method of payments, and, on either the face or back of the contract, must appear the definition of "accept", "method of payment", and "charge for permanent position which ends within ninety calendar days".

34-13-13.1. Service charge refund - Contracts and fees approved by commissioner - Cause of action by employee.

1. If an employment position terminates or the employee is fired or laid off before the end of ninety calendar days, the employee shall receive a refund of all service charges paid in excess of twenty percent of the gross wages actually received prior to termination or release. If the employee has a signed contract accepting an employment position but does not start employment, quits the job voluntarily, or is terminated for gross misconduct, the refund does not apply. Nothing contained in this section restricts an agency from receiving full-service charges at the time of the referral, subject to the refund herein provided.
2. Every employment agency shall submit copies of all contracts and fee schedules used by the agency or agent to the labor commissioner for approval. No contract or fee between an employment agency and 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.
3. This section does not apply to contracts wherein the service charge does not exceed one hundred dollars.
4. Any employee who is damaged by a violation of this section is entitled to receive from the licensee the entire amount of service charges the employee has paid the licensee.

34-13-14. Theatrical agencies - Duplicates of applications for engagements.

Repealed by S.L. 1995, ch. 341, § 6.

34-13-15. Employment agent requirements.

In addition to the foregoing sections governing specific classifications, the following shall govern each and every employment agent:

1. Every license must be hung in a conspicuous place in the main office of the employment agency.
2. No fee may be solicited or accepted as an application or registration fee by any employment agent for the purpose of being registered as an applicant for employment.
3. Every employment agent shall give to every person from whom the payment of a service charge is received for services rendered or to be rendered, or assistance given or to be given, a receipt bearing the name and address of the employment agency, the name of the employment agent, the amount of the payment, the date of the payment, and for what it is paid. Every receipt to an applicant by an employment agent must be numbered and bound in duplicate form. A duplicate copy of each receipt must be kept at least one year.
4. Every employment agent shall keep a record of all services rendered employers and employees. This record must contain the name and address of the employer by whom the services were solicited, the name and address of the employee, kind of position offered by the employer, kind of position accepted by the employee, probable duration

of the employment, rate of wage or salary to be paid the employee, amount of the employment agent's service charge, dates and amounts of payments, date and amount of refund, if any, and for what, and a space for remarks under which must be recorded anything of an individual nature to amplify the foregoing report and as information in the event of any question arising concerning the transaction. Such records must during business hours be open to the inspection of the commissioner at the address where the employment agency is conducted for the purpose of satisfying the commissioner that they are being kept in conformity with this section. Upon written complaint being made, the commissioner may require of the employment agent against whom the complaint is made a detailed account under oath in writing of the transaction referred to in the complaint. If the commissioner has reason to question the detailed report so submitted by the employment agent, the commissioner may demand of the employment agent the production of these records for examination by the commissioner, or the commissioner's agent, at such place as the commissioner may designate.

5. No employment agent may send out any applicant for employment without having obtained, either orally or in writing, a bona fide order, and if no employment of the kind applied for existed at the place to which the applicant was directed, the employment agent shall refund to the applicant, within forty-eight hours of demand, any sums paid by the applicant for transportation in going to and returning from the place, and all fees paid by the applicant. This chapter does not prevent an employment agent from directing an applicant to an employer where the employer has previously requested that the employer be accorded interviews with applicants of certain types and qualifications, even though no actual vacancy existed in the employer's organization at the time the applicant was so directed; nor does it prevent the employment agent from attempting to sell the services of an applicant to the employer even though no order has been placed with the employment agent; provided, that in any case the applicant is acquainted with the facts when directed to the employer, in which event no employment agent is liable to any applicant as provided in this section.
6. No employment agent may, personally, or by an agent or agents, solicit, persuade, or induce any employee to leave any employment in which the employment agent or the employment agent's agents has placed the employee. Nor may any agent, personally or through any agents, persuade or induce or solicit any employer to discharge any employee.
7. No employment agent may knowingly cause to be printed or published a false or fraudulent notice or advertisement for help or for obtaining work or employment.
8. No employment agent may place or assist in placing any person in unlawful employment.
9. No employment agent may fail to state in any advertisement, proposal, or contract for employment that there is a strike or lockout at the place of proposed employment, if the agent has knowledge that such condition exists.
10. Any person who splits, divides, or shares, directly or indirectly, any fee, charge, or compensation received from any employee with any employer, or person in any way connected with the business thereof, is guilty of a class A misdemeanor.

34-13-16. Penalty.

Any person who violates the provisions of this chapter for which another penalty is not specifically provided is guilty of a class A misdemeanor.