

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 519
Committee Substitute Favorable 5/10/91
Third Edition Engrossed 5/14/91

Short Title: Employment Agency Charges.

(Public)

Sponsors:

Referred to:

April 1, 1991

1 A BILL TO BE ENTITLED
2 AN ACT REQUIRING EMPLOYERS TO REIMBURSE EMPLOYMENT AGENCY
3 FEES UNDER CERTAIN CIRCUMSTANCES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 95-47.3 reads as rewritten:

6 "**§ 95-47.3. Fees and contracts; filing with Commissioner.**

7 (a) Every license applicant shall file with the Commissioner a schedule of fees or
8 charges made by the private personnel service to applicants for employment for any
9 services rendered, stating clearly the conditions under which the private personnel
10 service refunds or does not refund a fee, together with all rules or regulations that may
11 in any manner affect the fees charged or to be charged for any service. Every license
12 applicant and licensee shall include in its schedule of fees or charges a clear description
13 of how it determines fees for placement of employment, the compensation of which is
14 based, in whole or in part, on commission. Changes in the schedule may be made, but
15 no change shall become effective until seven calendar days after the filing thereof with
16 the Commissioner. It is unlawful for a private personnel service to charge, demand,
17 collect or receive a greater compensation from an applicant for employment for any
18 service performed than as specified in the schedule filed with the Commissioner.

19 (b) Every license applicant shall file with the Commissioner a copy of the
20 contract which the private personnel service will require applicants for employment to
21 execute."

1 Sec. 2. G.S. 95-47.4 is amended by adding the following new subsection to
2 read:

3 "(h) If a private personnel service places an applicant in a position of employment,
4 the compensation of which is based, in whole or in part, on commission, the private
5 personnel service shall have a written job order from the employer, shall explain to the
6 applicant and the employer how the fee for the placement is calculated, and shall inform
7 in writing both the applicant and the employer of the provisions of G.S. 95-47.3A
8 governing fee refunds from employers."

9 Sec. 3. Chapter 95 of the General Statutes is amended by adding the
10 following new section to read:

11 "**§ 95-47.3A. Fee reimbursement from employers due to overstated earnings**
12 **expectations.**

13 (a) An applicant who accepts employment that is compensated in whole or in
14 part on a commission basis, and who pays a fee to the licensee calculated on the
15 commission-based compensation amount stated by the employer in the written job
16 order, may file a written complaint with the Commissioner if, at the end of the
17 employment period for which the compensation applied, or any part thereof, the
18 applicant did not earn at least eighty percent (80%) of the compensation amount stated
19 by the employer in the written job order.

20 (b) The Commissioner shall investigate all complaints filed pursuant to
21 subsection (a) of this section. After completion of the investigation the Commissioner
22 shall order the employer to reimburse the applicant for part or all of the fee paid by the
23 applicant to the licensee if the Commissioner finds all of the following:

24 (1) The licensee reasonably relied on the compensation information
25 provided by the employer in calculating the fee paid by the applicant;

26 (2) It is unrealistic to expect that the applicant could earn substantially the
27 amount of commission-based compensation stated by the employer in
28 the written job order filed with the licensee;

29 (3) The fee paid by the applicant to the licensee was calculated based on
30 the commission-based compensation stated by the employer in the
31 written job order; and

32 (4) The applicant is entitled to a refund of part or all of the fee.

33 (c) The reimbursement due the applicant under subsection (b) shall be the
34 difference between the fee actually paid by the applicant to the licensee, and the fee that
35 the applicant would have paid if the compensation stated by the employer in the written
36 job order had been what the applicant actually earned or reasonably could have earned
37 during the applicable employment period.

38 (d) The Commissioner shall adopt rules setting forth procedures for complaints
39 and investigations, and standards for determining whether a statement by the employer
40 in the licensee's written job order of potential or anticipated commission-based earnings
41 is realistic under the circumstances. Rules adopted by the Commissioner pursuant to this
42 section shall be in accordance with Chapter 150B of the General Statutes."

43 Sec. 4. This act becomes effective January 1, 1992, and applies to job
44 placements made on or after that date.