

# MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 1688

6  
7 H.P. 1191

House of Representatives, December 19, 1985

8 Approved for introduction by a majority of the Legislative Council  
9 pursuant to Joint Rule 26.

10 Received by the Clerk of the House on December 19, 1985. Referred to  
the Committee on Business and Commerce and 1,600 and ordered printed  
pursuant to Joint Rule 14.

EDWIN H. PERT, Clerk

11 Presented by Representative Brannigan of Portland.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-SIX  
16

17 AN ACT Establishing State Regulation  
18 of Employment Agencies.  
19

20 Be it enacted by the People of the State of Maine as  
21 follows:

22 Sec. 1. 30 MRSA c. 215, subc. IV, as amended, is  
23 repealed.

24 Sec. 2. 32 MRSA c. 107 is enacted to read:

25 CHAPTER 107

26 EMPLOYMENT AGENCIES

27 §10101. Definitions

28 As used in this chapter, unless the context oth-  
29 erwise indicates, the following terms have the fol-  
30 lowing meanings.

31 1. Applicant. "Applicant" means the person seek-  
32 ing registration under this chapter.

1           2. Client. "Client" means any person, whether  
2 employed or unemployed, seeking or entering into any  
3 arrangement for employment or change of employment  
4 through an employment agency.

5           3. Commissioner. "Commissioner" means the Com-  
6 missioner of Business, Occupational and Professional  
7 Regulation.

8           4. Department. "Department" means the Department  
9 of Business, Occupational and Professional Regula-  
10 tion.

11           5. Employer. "Employer" means any person employ-  
12 ing or seeking an arrangement to employ any client  
13 through an employment agent.

14           6. Employment agency. "Employment agency" means  
15 any person who conducts a full-time or part-time ser-  
16 vice for the purpose of procuring or attempting to  
17 procure permanent or temporary employment or engage-  
18 ment for clients; for the registration of persons  
19 seeking employment or engagement; or for giving in-  
20 formation about where employment or engagement may be  
21 procured, when a fee is charged for that service.

22           7. Employment agent. "Employment agent" means  
23 any person who is employed by or affiliated with an  
24 employment agency and who has responsibility for pro-  
25 viding the services of an employment agency.

26           8. Person. "Person" means an individual, part-  
27 nership, unincorporated organization or corporation.

28           9. Premises. "Premises" means the physical loca-  
29 tion in and at which an employment agency is located  
30 and from which it conducts business whether owned,  
31 leased or rented. "Premises" includes entrances and  
32 exits and other common areas, as well as adjoining  
33 private walks, parking and other common grounds.

34           §10102. Registration required

35           No person may operate or advertise an employment  
36 agency in this State unless he is registered with the  
37 department in accordance with this chapter. Each em-  
38 ployment agency office or branch office shall regis-

1 ter separately under this chapter. Each employment  
2 agency's certificate of registration shall be posted  
3 in a conspicuous place where clients enter its  
4 premises.

5 §10103. Exemptions

6 Nothing in this chapter may be construed as pro-  
7 hibiting or restricting the activities of:

8 1. Search firms. A person retained and compen-  
9 sated solely by the employers, none of whose fees or  
10 charges are paid directly or indirectly by any cli-  
11 ent;

12 2. Agencies furnishing temporary help. Persons  
13 who themselves directly employ individuals for the  
14 purpose of furnishing part-time or temporary help to  
15 employers. This exemption is for the providing of so-  
16 called "temporaries" who do not intend nor expect to  
17 become employees of an employer; or

18 3. Others. Teachers' agencies, nurses' associa-  
19 tions, charitable institutions, arrangers of employ-  
20 ment for seamen and professional or occupational as-  
21 sociations which serve only their own membership and  
22 which charge only a nominal fee.

23 §10104. Application for registration

24 Every person applying for registration shall file  
25 with the commissioner a written application stating  
26 the name and address of the applicant; the name under  
27 which the employment agency is to be operated; the  
28 street and number of the premises where the business  
29 is to be conducted; the name and address of the indi-  
30 vidual who will direct and operate the agency's  
31 placement activities; and a description of his expe-  
32 rience in performing placement services and whether  
33 the applicant is pecuniarily interested in any other  
34 employment agency and, if so, its name and location.

35 The application must also show whether the appli-  
36 cant is the only person financially interested in the  
37 business to be carried on under the registration,  
38 must be signed by the applicant and sworn to before a  
39 notary public and must identify all persons holding

1 over 10% interest in the agency or receiving any per-  
2 centage of the profits. If the applicant is a corpo-  
3 ration, the application must state the names and ad-  
4 dresses of the officers and directors of the corpora-  
5 tion and must be signed and sworn to by the president  
6 and secretary of the corporation. If the applicant  
7 is a partnership, the application must state the  
8 names and addresses of all partners and must be  
9 signed and sworn to by all of them. The application  
10 must further show whether or not the applicant or any  
11 of its principals is or has in the past been engaged,  
12 employed or interested in the business of an employ-  
13 ment agency in this State or any other and, if so,  
14 when and where. The application must also contain any  
15 additional information necessary to satisfy the com-  
16 missioner that the applicant has the required quali-  
17 fications for registration.

18 §10105. Requirements for registration

19 1. References. Each application must be accompa-  
20 nied by references from 3 persons who have known the  
21 applicant or its officers, if a corporation, for at  
22 least 2 years and stating that the person or persons  
23 applying are of good character. Each reference must  
24 also contain a description of the applicant's ability  
25 to operate an employment agency, including his educa-  
26 tion, business training, financial responsibility, ex-  
27 perience in and knowledge of the employment agency  
28 business, the capability of staff and his and their  
29 ability to conduct the day-to-day management of the  
30 employment agency. Any information contained in a  
31 reference which is not based upon the personal knowl-  
32 edge of the person providing it must be so identi-  
33 fied.

34 2. Forms and contracts. Each application must be  
35 accompanied by copies of all forms and contracts  
36 which the applicant proposes to require its clients  
37 to execute and the forms and contracts must be ap-  
38 proved by the commissioner prior to registration. The  
39 commissioner shall not approve any contract which  
40 does not clearly, fully and fairly state the terms  
41 and conditions between the applicant employment agen-  
42 cy and its prospective client.

1           3. Residence. An applicant for registration need  
2 not be a resident of this State. Any applicant who is  
3 not a resident shall designate in writing an agent  
4 within the State for service of process and shall be  
5 responsible for keeping this designation current.

6           4. Premises. An applicant for registration must  
7 have a permanent place of business and must demon-  
8 strate that its premises are suitable for and ade-  
9 quate to the needs of an employment agency. No agency  
10 may be located on premises any part of which are used  
11 as an inn, lodging house or boarding home, nor where  
12 liquor is sold.

13           5. Bonds. Each applicant shall provide a cash  
14 bond of \$10,000 or evidence of a surety bond in the  
15 amount of \$10,000 issued by a surety company licensed  
16 to do business in this State and payable to the Trea-  
17 surer of State. No surety bond may be canceled or  
18 subject to cancellation unless 30 days written notice  
19 has been filed with the commissioner. The registra-  
20 tion required under this chapter shall automatically  
21 lapse upon failure of any registrant to continuously  
22 maintain a bond as required by this section. Each  
23 bond shall be conditioned upon the registrant's com-  
24 pliance with this chapter and any rules adopted under  
25 this chapter and further conditioned upon the right  
26 of any person injured or damaged by the intentional  
27 or negligent act of the registrant to bring, in his  
28 own name, an action on the bond.

29           6. Experience and training or education. Each  
30 applicant or his agent must have experience in the  
31 conduct of an employment agency or training or educa-  
32 tion in business management or administration.

33           §10106. Registration and inspection fees

34           1. Amount. Registration fees may be established  
35 by the commissioner in amounts which are reasonable  
36 and necessary. The fees may not exceed the following  
37 amounts:

38           A. For an initial application for registration,  
39 \$100; and

40           B. For an annual renewal of registration, \$75.

1           2. Disposal of fees. All fees received by the  
2 commissioner shall be paid to the Treasurer of State  
3 to carry out Title 10, chapter 901. Any balance of  
4 fees shall not lapse, but shall be carried forward as  
5 a continuing account to be expended for the same pur-  
6 poses in the following fiscal years.

7           §10107. Issuance of registration

8           The commissioner shall issue a certificate of  
9 registration to any person who meets the requirements  
10 of this chapter upon payment of the prescribed regis-  
11 tration fee. Registration may be denied for failure  
12 to meet any requirement or for any reason for which  
13 a registration may be suspended, revoked or denied  
14 renewal.

15           §10108. Renewal of registration

16           Registrations shall expire annually on June 30th  
17 or such other time as the commissioner may establish  
18 and shall become invalid on that date unless a renew-  
19 al fee is paid and the registration renewed.

20           §10109. Disciplinary actions; hearings; rules

21           1. Complaints. The commissioner may order an in-  
22 vestigation of a complaint on his own motion or on  
23 written complaint filed with him regarding noncompl-  
24 iance with or violation of this chapter.

25           2. Hearings. Hearings may be conducted by the  
26 commissioner to assist with investigations; to deter-  
27 mine whether grounds exist for suspension, revocation  
28 or denial of a license; or as otherwise deemed neces-  
29 sary by the commissioner to the fulfillment of his  
30 responsibilities under this chapter.

31           3. Rules. The commissioner may, in accordance  
32 with the Maine Administrative Procedure Act, Title 5,  
33 chapter 375, adopt such rules as may be reasonably  
34 necessary for the proper performance of his duties  
35 and the administration of this chapter.

36           4. Suspension, revocation, refusal to renew. The  
37 commissioner may suspend or revoke a certificate of

1 registration pursuant to Title 5, section 10004. The  
2 commissioner may refuse to issue or renew, or the Ad-  
3 ministrative Court may suspend, revoke or refuse to  
4 renew, a certificate of registration for any of the  
5 following reasons:

6 A. Obtaining a certificate of registration by  
7 means of fraud, misrepresentation or concealment  
8 of material facts;

9 B. Subject to the limitations of Title 5, chap-  
10 ter 341, conviction of a crime in any court of  
11 this State, any other state or of the United  
12 States, if the conviction is found by the commis-  
13 sioner to have a direct bearing on the  
14 registrant's ability to engage in the business of  
15 an employment agency;

16 C. If, in the conduct of the business of an em-  
17 ployment agency, the registrant has used fraudu-  
18 lent, coercive or dishonest practices; has demon-  
19 strated incompetence or financial irresponsibili-  
20 ty; or has been a source of injury and loss to  
21 the public; or

22 D. Violating any provision of this chapter or of  
23 any rule adopted by the commissioner.

24 5. Acts of agents. Any violation of this chapter  
25 or any rules adopted under this chapter by an employ-  
26 ment agent is cause for the suspension, revocation or  
27 nonrenewal of the registration of the employment  
28 agency unless it can be demonstrated that neither the  
29 applicant nor any person responsible for the manage-  
30 ment of the affairs of the employment agency had ac-  
31 tual knowledge of a violation or, acting in a reason-  
32 able manner, should have had knowledge of a viola-  
33 tion.

34 §10110. Penalty

35 Any person who operates or advertises an employ-  
36 ment agency without registering in accordance with  
37 this chapter or any person who violates this chapter  
38 commits a civil violation for which a forfeiture not  
39 to exceed \$500 may be adjudged. Each business day or  
40 part of the business day constitutes a separate vio-



1 lation. The State may bring an action in Superior  
2 Court to enjoin any person from violating this chap-  
3 ter, regardless of whether proceedings have been or  
4 may be instituted in the Administrative Court or  
5 whether proceedings to impose a civil forfeiture have  
6 been or may be instituted.

7 §10111. Duties of registrants

8 1. Register. Every employment agency shall main-  
9 tain a register in which shall be entered the date of  
10 acceptance of each client for employment, the name  
11 and address of the client, the names and addresses of  
12 each employer to whom the applicant has been sent or  
13 referred and of the fee received or charged. The  
14 register of clients shall be open to inspection by  
15 the commissioner or his authorized agents during reg-  
16 ular office hours. No employment agency or its em-  
17 ployees may knowingly make any false entry in its  
18 register.

19 2. Placement fees charged to clients. A fee may  
20 be charged to a client only for a job placement. An  
21 employment agency shall not charge to nor accept from  
22 a client a fee or other consideration unless:

23 A. The fee is charged in accordance with the  
24 terms of a written client contract, a copy of  
25 which has been furnished to the client;

26 B. The agency has been directly responsible for  
27 referring that client to an employer or an em-  
28 ployer to that client; and

29 C. As a result of the referral, the client has  
30 been employed by the employer.

31 No fee may be charged or accepted for the simple reg-  
32 istration of clients for employment.

33 The placement fee charged to a client by an employ-  
34 ment agency shall not exceed the equivalent of the  
35 first full week's gross wages. This fee shall be in  
36 full compensation for all services of the employment  
37 agency. If for any reason employment terminates in  
38 less than one month, the fee shall be adjusted so as  
39 not to exceed 15% of the wages earned.

1           3. Terms of payment of fee for placement. If the  
2 placement fee charged to a client is paid weekly, 1/8  
3 of the fee shall be paid each week for the first 8  
4 weeks of employment; if paid semimonthly, each pay-  
5 ment shall be 1/4 of the total fee; and if paid  
6 monthly, each payment shall be 1/2 of the total fee.

7           4. Receipt given to client. Every employment  
8 agency shall give to each client from whom a fee or  
9 other consideration is received, a receipt which must  
10 show the name of the client, the amount of the fee,  
11 any balance due, the date, the name or nature of the  
12 employment or situation procured and the name and ad-  
13 dress of the employer.

14           5. Prohibited activities. An employment agency  
15 shall not engage in any of the following activities  
16 or conduct:

17           A. Publish or cause to be published any false,  
18 fraudulent or misleading information, representa-  
19 tion, promise, notice or advertisement;

20           B. Advertise in any manner or use letterheads or  
21 receipts or other written or printed materials,  
22 unless that advertising or materials contain the  
23 name and address of the employment agency and the  
24 word "agency" or other language which clearly  
25 shows that the business is an employment agency  
26 and that it is registered with the department;

27           C. Direct a client to an employer for the pur-  
28 pose of obtaining employment without having a re-  
29 cent bona fide order therefor, except that:

30                   (1) A qualified client may be directed to  
31 an employer who has previously requested  
32 that he regularly be accorded interviews  
33 with clients of certain qualifications if a  
34 confirmation of that order is sent to the  
35 employer; and

36                   (2) An employment agency may attempt to  
37 sell the services of a client to an employer  
38 from whom no job order has been received as  
39 long as this fact is told to the client be-  
40 fore he is directed to the employer.

1 Any client who is referred to an employer con-  
2 trary to this paragraph without obtaining employ-  
3 ment as a result of that referral shall be reim-  
4 bursed by the employment agency for all ordinary  
5 and necessary travel expenses incurred by the  
6 client as a result of that referral, within 24  
7 hours of making a demand for reimbursement;

8 D. Send or cause to be sent a client to any em-  
9 ployer if the employment agency knows, or reason-  
10 ably should have known, that the prospective em-  
11 ployment is or would be in violation of state or  
12 federal laws governing minimum wages or child la-  
13 bor standards;

14 E. Send or cause to be sent a client to any  
15 place that the employment agency knows, or rea-  
16 sonably should know, is maintained for illegal  
17 purposes;

18 F. Compel any person to enter the agency for any  
19 purpose by use of force or otherwise;

20 G. Require clients to subscribe to any publica-  
21 tion or incidental service or contribute to the  
22 cost of advertising;

23 H. Refuse to return on demand of a client any  
24 personal property belonging to him;

25 I. Send or cause to be sent any client to any  
26 employer which the agency knows or should know,  
27 is experiencing a strike, unless the fact of the  
28 strike is told to the client;

29 J. Solicit, persuade, induce or attempt to in-  
30 duce any employed person to leave an employment  
31 if that solicitation, persuasion or inducement is  
32 for the purpose of securing a new fee from the  
33 person, providing that nothing in this chapter  
34 prohibits notifying a client that a position ex-  
35 ists where the client has requested the agency to  
36 place him;

37 K. Divide or share, or offer to divide or share,  
38 placement fees with any employer; or

1           L. Solicit, persuade, induce or attempt to in-  
2           duce any employer to create a vacancy by dis-  
3           charge.

4           6. Supervision. Each employment agency shall es-  
5           tablish and maintain reasonable procedures designed  
6           to educate the employment agents in its employ in the  
7           requirements of this chapter and any rules adopted by  
8           the commissioner and to ensure their compliance with  
9           these requirements.

10

STATEMENT OF FACT

11           Current law does not allow a person to operate an  
12           employment agency unless the person obtains a license  
13           from the municipality where the agency is located.  
14           If a licensee does not operate in accordance with  
15           law, the municipality may revoke the license, but the  
16           person is free to move his agency to another city and  
17           the municipal officers in that city have no access to  
18           information about the client's past practices.

19           This bill removes responsibility for licensing  
20           from the municipalities and requires agencies to reg-  
21           ister with the State, thus providing better control  
22           over unethical agencies.

23

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