

(7) "Motor vehicle" means any device propelled or drawn by any power other than muscular power in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting building and road construction equipment.

Sec. 19. Laws 1982, chapter 635, section 9, is amended to read:

Sec. 9. REPEALER.

Minnesota Statutes 1980, sections 223.04; 223.07; 223.08; 223.09; 223.10; 223.11; 232.01; 232.02, subdivisions 4, 5, 6, 7, 8 and 9; 232.03; 232.04; and 232.06, subdivision 5; Minnesota Statutes 1981 Supplement, sections 223.01; 223.02; 223.03; 223.05; and 232.02, subdivisions 1, 2 and 3, are repealed. Sections 1 to 6 are repealed July 1, 1983. Any claims under sections 1 to 6 which are not settled before July 1, 1983, may be settled under the provisions of section 4, subdivisions 7 and 8, as they existed prior to July 1, 1983.

Sec. 20. STATUTES REMAIN IN EFFECT.

Notwithstanding Minnesota Statutes, section 645.36, Minnesota Statutes, sections 223.15 to 223.19, and section 232.22, subdivision 7, clause (b), remain in effect without interruption.

Sec. 21. APPROPRIATION.

The sum of \$95,000 is appropriated from the general fund for the biennium ending June 30, 1985, to the commissioner of agriculture for the purposes of administering and enforcing this chapter. The personnel complement of the department of agriculture is increased by two.

Sec. 22. REPEALER.

Minnesota Statutes 1982, section 223.16, subdivision 8, is repealed.

Sec. 23. EFFECTIVE DATE.

Sections 1 to 23 are effective July 1, 1983.

Approved June 14, 1983

CHAPTER 375 — S.F.No. 1189

An act relating to employment; exempting search firms from employment agency licensing; subjecting certain search firms to fee and bond requirements; requiring certain statements, fees, and bonds to be submitted at the time a search firm is established; prohibiting certain practices; requiring certain practices; amending Minnesota Statutes 1982, sections 184.22, subdivision 2, and by adding subdivisions; 184.29; 184.30, subdivision 1; 184.37; 184.38, subdivisions 6, 8, 9, 10, 11, 17, 18, 19, and by adding a subdivision; and 184.41.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1982, section 184.22, subdivision 2, is amended to read:

Subd. 2. **EXEMPTIONS.** Except as otherwise specifically provided, the provisions of sections 184.21 to 184.41 ~~shall do~~ not apply to any person, firm, corporation, partnership, or association engaged in the business of a management consultant, ~~or management search consultant or personnel consulting firm~~ (hereafter "search firm") provided that if: (1) the search firm is retained by, acts solely on behalf of and is only compensated ~~on a nonecontingency basis solely~~ by an ~~the~~ employer, pursuant to a written or oral ~~retainer~~ agreement specifying the particular search or consultation assignment, to identify, appraise or recommend an individual or individuals for consideration for an executive or professional position for a beginning annual base salary (exclusive of bonuses or commissions) of at least \$27,000, which amount shall be adjusted every second year by an amount equal to the percentage change in the Consumer Price Index recorded by the U.S. Department of Labor position to be filled; and (2) in no instance ~~does~~ will any individual candidate who is identified, appraised or recommended by the search firm for consideration for an executive or professional position employment become liable in whole or in part to pay a fee of any kind, directly or indirectly, on account of any service performed by the search firm; and (3) in no instance ~~shall~~ does the search firm or its agents solicit, persuade or induce any individual to terminate his or her employment with an employer with whom the search firm has placed ~~an~~ that individual; and (4) the search firm ~~shall does~~ not carry on any other activity that comes within the definition of employment agency as hereinbefore defined. Each search firm shall file annually with the commissioner a sworn statement indicating whether or not it has conducted its business during the past year in a manner consistent with the above provisions, exempting search firms from regulation as employment agencies. The statement ~~shall must~~ include, in addition to other information the commissioner ~~may~~ by rule ~~require~~ requires, a representation as to whether the search firm has placed any advertisements in the "help wanted" columns of newspapers published in Minnesota. If the commissioner at any time has reason to believe that the search firm has not conducted its business in a manner consistent with the above four conditions, the commissioner is ~~authorized to~~ may inspect the relevant records of the search firm for the purpose of confirming whether the search firm has maintained its exempt status during the year. If it is determined, either by written admission by the search firm or by a finding of fact in a court of law or by a hearing officer pursuant to chapter 14, that any of the four conditions were not met, the search firm shall thereafter be considered an employment agency and be subject to the provisions of sections 184.21 to 184.41. ~~In the event~~ If an employment agency offers services which are the same or similar to those offered by a search firm, or ~~in the event~~ if a search firm offers services which are the same or similar to those offered by an employment agency, the person or entity offering these combined employment agency and search firm services shall

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identify itself to the public by displaying the name in which it is registered with the commission as a licensed employment agency; provided, that no registered search firm may offer licensed employment agency services at the same location.

Sec. 2. Minnesota Statutes 1982, section 184.22, is amended by adding a subdivision to read:

Subd. 3. REGISTRATION. Before starting business in this state, any firm established as an exempt firm under subdivision 2 shall (1) file a sworn statement with the commissioner indicating whether or not it will conduct its business in a manner consistent with the provisions of subdivision 2 and other information the commissioner by rule requires, (2) pay the registration fee required by section 184.29, and (3) furnish the bond required by section 184.30. A search firm registration may not be transferred to another search firm, unless written notice of the transfer is given to the commissioner.

Sec. 3. Minnesota Statutes 1982, section 184.22, is amended by adding a subdivision to read:

Subd. 4. CONTINUED EXEMPTION. A search firm exempted under subdivision 2 prior to the effective date of this act is not subject to the provisions of section 184.29, 184.30, 184.37, or 184.38.

Sec. 4. Minnesota Statutes 1982, section 184.22, is amended by adding a subdivision to read:

Subd. 5. FEE PAYMENT PROHIBITED. No employer may require any job candidate placed with the employer by a search firm to pay, directly or indirectly, all or part of the search firm's fee.

Sec. 5. Minnesota Statutes 1982, section 184.29, is amended to read:

184.29 FEES.

Before a license ~~shall be~~ is granted to an applicant ~~such,~~ the applicant shall pay the following fee:

(a) An employment agent shall pay an annual license fee of \$200 for each license.

(b) A search firm exempt under section 184.22, subdivision 2, shall pay an annual registration fee of \$200, accompanying the annual statement to the commissioner.

~~Applicants~~ (c) An applicant for a counselor's license shall pay a license fee of \$10 and a renewal fee of \$5.

~~Applicants~~ (d) An applicant for an employment agency manager's license shall pay a license fee of \$10 and a renewal fee of \$5.

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Sec. 6. Minnesota Statutes 1982, section 184.30, subdivision 1, is amended to read:

Subdivision 1. Every application for an employment agency's license shall, and every annual report required to be filed under section 184.22, subdivision 2, must be accompanied by a surety bond approved by the department in the penal sum amount of \$10,000 for each location, with one or more sureties or a duly authorized surety company to be approved by the department and. The bond must be filed in the office of the secretary of state, and conditioned that the employment agency and each member, shareholder, director, or officer of a firm, partnership, corporation, or association operating as such an employment agency will conform to and not violate any of the terms or requirements comply with the provisions of sections 184.21 to 184.40 or violate the covenants of and any contract made by such the employment agent in the conduct of said the business. Action on this bond may be brought by and prosecuted in the name of any A person damaged by any a breach or of any condition thereof of the bond may bring an action on the bond, and successive actions may be maintained thereon on it.

Sec. 7. Minnesota Statutes 1982, section 184.37, is amended to read:

184.37 CONTRACTS WITH APPLICANTS FOR EMPLOYMENT.

Subdivision 1. EMPLOYMENT AGENTS. Every 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 shall 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, shall appear the definition of "accept," "method of payment," "temporary position," and "charge for permanent position which proves to be temporary."

Subd. 2. SEARCH FIRMS. Every search firm must give to each job candidate a written statement confirming that the candidate will in no instance become liable in whole or in part to pay a fee of any kind, directly or indirectly, on account of any service performed by the search firm. A copy of this statement must be kept on file by the search firm for at least one year.

Sec. 8. Minnesota Statutes 1982, section 184.38, subdivision 6, is amended to read:

Subd. 6. (a) No employment agent or search firm shall send out any applicant for employment without having obtained a job order, and if no employment of the kind applied for existed at the place to which the applicant was directed, the employment agent or search firm shall refund to the applicant, within 48 hours of demand, any sums paid by the applicant for transportation in going to and returning from the place.

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(b) Nothing in this chapter shall be construed to prevent an employment agent or search firm from directing an applicant to an employer where the employer has previously requested that he 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 shall it prevent the employment agent or search firm from attempting to sell the services of an applicant to the employer even though no order has been placed with the employment agent or search firm; provided, that prior to scheduling an interview with an employer, when no opening currently exists with that employer, the applicant is clearly informed that no opening exists at that time.

Sec. 9. Minnesota Statutes 1982, section 184.38, subdivision 8, is amended to read:

Subd. 8. No employment agent or search firm shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for help or for obtaining work or employment. For purposes of this subdivision the phrase "false or fraudulent notice or advertisement" shall include the following:

(a) The advertisement of any job for which there is no bona fide oral or written job order and completed job order form in existence at the time the advertisement is placed;

(b) The inclusion in any advertisement of any information concerning the identity, availability, features, or requirements of any advertised job when such information is not substantiated by, and included in, the supporting job order form;

(c) The advertisement of any job opening of the type described in subdivision 6, clause (b);

(d) The advertisement of any job without the inclusion in the advertisement of the "job order number" required in subdivision 18;

(e) If an applicant appears at any agency or search firm in response to the advertisement of a particular job, the failure to attempt placement of the applicant in the advertised job; provided however, that the agency or search firm may refuse to attempt such placement if the reason(s) for the refusal are clearly and truthfully disclosed to the applicant either orally or in writing.

Sec. 10. Minnesota Statutes 1982, section 184.38, subdivision 9, is amended to read:

Subd. 9. No employment agent or search firm shall place or assist in placing any person in unlawful employment.

Sec. 11. Minnesota Statutes 1982, section 184.38, subdivision 10, is amended to read:

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Subd. 10. No employment agent or search firm shall 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 ~~he~~ the agent or firm has knowledge that such condition exists.

Sec. 12. Minnesota Statutes 1982, section 184.38, subdivision 11, is amended to read:

Subd. 11. ~~Any person, firm, or corporation who shall~~ No employment agency or its employee may split, divide, or share, directly or indirectly, any fee, charge, or compensation received from any employee employer or applicant with any employer, or person in any way connected with the employer's business thereof. ~~No search firm or its employee may split, divide, or share, directly or indirectly, any fee, charge, or compensation received from any employer with any person connected in any way with the employer's business.~~ A violation of this subdivision shall be punished by a fine of not less than \$100, and not more than \$1,000, or on failure to pay such the fine by imprisonment for a period not to exceed one year, or both, at the discretion of the court.

Sec. 13. Minnesota Statutes 1982, section 184.38, subdivision 17, is amended to read:

Subd. 17. Except for applicant information given in the course of normal agency or firm operations, no employment agent or search firm shall voluntarily sell, give, or otherwise transfer any files, records, or other information relating to his employment agency or search firm applicants and employers to any person other than a licensed employment agent or registered search firm or a person who agrees to obtain an employment agency license or register as a search firm. Every employment agent or search firm who ceases to engage in the business of or act as an employment agent or search firm shall notify the department of such fact within 30 days thereof, and shall advise the department as to the disposition of all files and other records relating to his employment agency or search firm business.

Sec. 14. Minnesota Statutes 1982, section 184.38, subdivision 18, is amended to read:

Subd. 18. Every job order communicated to an agency or search firm shall be recorded by the agency or search firm on a job order form which form shall contain specific information as prescribed by the department. A job order form shall be filled out for each job order prior to any attempt to advertise the job opening or to place persons in said job. Such forms shall each be assigned a separate number and shall be maintained by the agency or search firm for a period of one year.

Sec. 15. Minnesota Statutes 1982, section 184.38, subdivision 19, is amended to read:

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Subd. 19. No person shall be required to pay a fee to an employment agency for a position, whether temporary or permanent, if the applicant withdraws acceptance of a the position within three days, excluding Saturday, Sunday and legal holidays, of signing an acceptance form and notifies the agency in writing of the withdrawal, provided that the applicant did not actually start the job. The three day withdrawal period applies regardless of who is to pay the fee to the employment agency.

Sec. 16. Minnesota Statutes 1982, section 184.38, is amended by adding a subdivision to read:

Subd. 20. No employment agent or search firm shall knowingly misrepresent to any employer the educational background, skills, or qualifications of any job candidate; or knowingly misrepresent to a job candidate the responsibilities, salary, or other features of any position of employment.

Sec. 17. Minnesota Statutes 1982, section 184.41, is amended to read:

184.41 VIOLATIONS.

Any person who shall engage engages in the business of or aet acts as an employment agent or counselor without first procuring a license as required by section 184.22, and any employment agent, manager, or counselor who shall violate violates the provisions of this chapter, shall be and any exempt firm which violates any of the applicable provisions of this chapter, is guilty of a misdemeanor.

In addition to the penalties for commission of a misdemeanor, the department may proceed by bring an action for an injunction against any person who shall engage engages in the business of or aet acts as an employment agent or counselor without first procuring the license required under section 184.22, or who engages in the business of or acts as a search firm without first filing the registration required under section 184.22, subdivision 3, and against any employment agent, manager, or counselor, or search firm who shall violate violates the applicable provisions of this chapter. If an agency, a manager, or a counselor, or search firm is found guilty of a misdemeanor in any action relevant to the operation of an agency, or search firm the department may suspend or revoke the license or registration of the agency, manager, or counselor, or search firm.

Approved June 14, 1983

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