

CHAPTER 184

EMPLOYMENT AGENCIES

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184.21 DEFINITIONS. Subdivision 1. **Words, terms, and phrases.** For the purposes of sections 184.21 to 184.40 and unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases shall have the meanings given them in this section.

Subd. 2. Employment agency. The term "employment agency" means any person, firm, corporation, partnership, or association in this state engaged for hire or compensation in the business of furnishing 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 agency; or furnishing any other person, firm, corporation, partnership, 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, partnership, or association to procure such help. The term "employment agency" does not mean a labor organization. The term "employment agent" shall be synonymous with the term "employment agency".

Subd. 3. Employer. The term "employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ any person through the medium or service of an employment agent.

Subd. 4. Applicant. The term "applicant", except when used to describe an applicant for an employment agency or counselor's license, means any person, whether employed or unemployed, seeking or entering into any arrangement for employment or change of employment through the medium or service of an employment agency.

Subd. 5. Counselor. The term "counselor" within the meaning of sections 184.21 to 184.40 means one who is employed by an employment agency to perform any act authorized by sections 184.21 to 184.40 to be performed by an employment agent.

Subd. 6. Person. "Person" includes an individual, a firm, corporation, partnership, or association.

Subd. 7. **Department.** The term "department" means the department of labor and industry of the state of Minnesota.

Subd. 8. **Board.** The term "board" means the employment agency advisory board.

[1967 c 884 s 1; Ex1967 c 1 s 6]

184.22 LICENSES REQUIRED; PENALTIES. No person shall engage in the business of or act as an employment agent or counselor unless he first obtains a license from the department. Any person who shall engage in the business of or act as an employment agent or counselor without first procuring such a license shall be punished by a fine of not less than \$25 and not more than \$100, or on failure to pay such fine by imprisonment for a period not to exceed 90 days, or both, at the discretion of the court.

In addition to the penalties described herein the department may proceed by injunction suit against any person who shall engage in the business of or act as an employment agent or counselor without first procuring such a license to enjoin such person from so engaging or acting.

[1967 c 884 s 2; Ex1967 c 1 s 6]

184.23 ADVISORY BOARD CREATED. Subdivision 1. There is created a board to be known as the employment agency advisory board whose duty shall be to advise the department as to the administration of the provisions of sections 184.21 to 184.40. Such board shall consist of seven members, appointed by the governor, with the advice and consent of the senate. A majority of those selected shall be actually engaged as an owner or manager of an employment agency licensed by the state of Minnesota for a period of three years immediately preceding the time of their appointment.

Subd. 2. Each member of the board shall hold office for four years and until his successor shall be appointed and qualifies, except that with respect to the first board, three members shall be appointed for four years, two members shall be appointed for three years, and two members for two years. In any event each term shall continue until the first day of January of the year following the year during which such term shall have expired and until a successor has been appointed and qualifies. Any member of the board may be removed by the governor for suspension or revocation of any license issued to him under sections 184.21 to 184.40, conviction of any crime amounting to a gross misdemeanor or felony, misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board, however created, shall be filled by appointment by the governor for the unexpired term.

Subd. 3. The board shall meet at the call of the commissioner of labor and industry and advise and consult with it on all major policy matters relating to the licensing of an employment agent or counselor. The board shall elect annually from its members a chairman, vice chairman and secretary. The board is also authorized to conduct its own meetings at the call of the chairman. The board members shall serve without pay except that each shall be allowed his actual and necessary lodging, meals and travel expenses.

[1967 c 884 s 3; Ex1967 c 1 s 6]

184.24 POWERS AND DUTIES OF THE DEPARTMENT. Subdivision 1. It is the duty of the department to administer the provisions of sections 184.21 to 184.40. The commissioner shall have power to compel the attendance of witnesses by the issuance of subpoenas, administer oaths, and to take testimony and proofs concerning all matters within its jurisdiction. The department shall affix an official seal to all certificates or licenses granted, and shall make all rules and regulations not inconsistent with law needed in performing its duties.

Subd. 2. The department shall have supervisory and investigative authority over all employment agents and counselors. The department shall have the right to examine only such records required to be kept by law which pertain to a specific written complaint or alleged offense by such employment agents and counselors and to examine the offices where business is or shall be conducted by them.

[1967 c 884 s 4; Ex1967 c 1 s 6]

184.25 RECORDS AND REPORTS. The department shall keep a full record of its proceedings which shall be open to the public for inspection at all reasonable times, and a register of all applicants for licenses which shall contain the names and addresses of such applicants as well as such other information as may be required by the department.

Such records shall include the date of application, place of business, the person by whom the applicant is employed or is to be employed in the case of a counselor, place of residence, whether or not an examination was required, the results thereof, and whether the applicant was rejected or a license granted, the date such license was granted and the type of license granted.

[1967 c 884 s 5; *Ex*1967 c 1 s 6]

184.26 APPLICATION; LICENSING. Subdivision 1. Every applicant for an employment agent's license or a renewal thereof shall file with the department a written application stating the name and address of the applicant, the type of license desired, the street and number of the building in which the business of the employment agent is to be conducted, 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 shall also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license, and shall be signed by the applicant and sworn to before a notary public and shall identify anyone holding over 20 percent interest in the agency or receiving any percentage of the profits. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of the corporation, and shall be signed and sworn to by the president and secretary thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. The application shall also state whether or not the applicant is, at the time of making application, or has at any previous time been engaged in or interested in, or employed by anyone engaged in the business of an employment agent, either in this state or any other, and, if so, when and where. 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 department a schedule of the fees or charges to be collected by such employment agency 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 department. Such schedule of fees and charges shall contain all information concerning financing the payment of the same including the rate of interest charged as well as any other service or carrying charges or costs. It shall be unlawful for any employment agency to charge, demand, collect, or receive a greater compensation for any service performed by him than is specified in such schedule filed with the department.

Subd. 2. Every applicant for a license for counselor or a renewal thereof shall file with the department a written application stating the name and address of the applicant, the kind of license desired, the name of the employment agency by whom such applicant will be employed if granted a license, the address where such agency conducts its business, whether or not the applicant is pecuniarily interested in the business of the employment agency by which he shall be employed or of any other employment agency and if so the name and address of such agency or agencies as well as a description of such interest. The application shall 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 an employment agency either in this state or any other and if so when and where.

Subd. 3. An applicant for an employment agency's license shall be a citizen of the United States and shall be at least 21 years of age. An applicant for a counselor's license shall be at least 21 years of age.

Subd. 4. No employment agent's license shall be issued or a renewal thereof granted to a firm, partnership, corporation, or association unless all the members, shareholders, directors, or officers thereof who will actively engage in the business of the employment agent, shall have obtained an employment agency manager's license.

Subd. 5. As a prerequisite to the granting of an employment agent's license to any firm, partnership, corporation, or association, an applicant therefor shall designate which of its members, shareholders, officers or directors are or shall be actively engaged in the business of the employment agency who, upon compliance with the terms of sections 184.21 to 184.40 shall, upon issuance of said employ-

ment agent's license, be entitled to perform all of the acts of an employment agent contemplated by sections 184.21 to 184.40.

Each such member, shareholder, director, or officer so designated, however, must make application for an employment agency manager's license, which application shall accompany the application for the employment agent's license for the firm, partnership, corporation, or association and be filed with the department at the same time as the application of the firm, partnership, corporation, or association for a license.

In the event any person becomes an active designated member, shareholder, officer, or director of a firm, partnership, corporation, or association after the issuance of an employment agent's license thereto, he shall as a prerequisite to becoming such an active member, or shareholder, officer, or director procure an employment agency manager's license as herein provided.

[1967 c 884 s 6; Ex1967 c 1 s 6]

184.27 TRANSFER OF LICENSE AND CONSENT TO OTHERS BECOMING CONNECTED WITH LICENSEE. No employment agent's license granted under the terms of sections 184.21 to 184.40 shall be transferable, except with the consent of the department. No employment agent shall permit any person not mentioned in the license to become connected with the business as a member, shareholder, officer, or director active in the conduct of the business of the employment agent unless the consent of the department shall first be 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 shall be endorsed upon the license and, if such license is renewed, shall be substituted for or added to the names of the persons originally mentioned therein.

[1967 c 884 s 7; Ex1967 c 1 s 6]

184.28 EXAMINATION. Subdivision 1. Every applicant for an employment agency manager's license or a counselor's license shall, before the department issue a license to him, be required to take and successfully complete a written examination conducted by the department or its authorized representative of such nature and scope as will be sufficient in the judgment of the department to establish the competency of the applicant to operate and conduct an employment agency or to perform services as a counselor for such agency. The examination for a license to manage an employment agency shall be more exacting and shall require a higher standard of knowledge as to the fundamentals of operating an employment agency and of the law and regulations pertaining thereto, than that for a counselor's license. No examination shall be required for the renewal of any license unless such license has theretofore been revoked or suspended. Provided, however, that any licensee having been licensed to conduct an employment agency or as a counselor in the state of Minnesota who shall fail to renew his license within 90 days after the date of expiration may be required by the department to again take an examination.

Subd. 2. The department shall hold such examinations at such times and places as it shall determine. An examination fee of \$10 shall be paid by each applicant in addition to the license fee, which examination fee shall be retained by the department whether or not the applicant passes the examination. The examination fee shall be forfeited if the applicant does not take the examination within six months of the application date.

[1967 c 884 s 8; Ex1967 c 1 s 6]

184.29 FEES. Before a license shall be granted to an applicant such applicant shall pay the following fee:

An employment agent shall pay an annual license fee of \$150 for each license.

Applicants for a counselor's license shall pay a license fee of \$5 and a renewal fee of \$3.

Applicants for an employment agency manager's license shall pay a license fee of \$5 and a renewal fee of \$3.

[1967 c 884 s 9]

184.30 BONDS. Subdivision 1. Every application for an employment agency's license shall be accompanied by a bond in the penal sum of \$10,000 for each location, whether class 1, class 2, or both, and \$2,000 if for a class 3 or class 4

license or both, with one or more sureties or a duly authorized surety company to be approved by the department and filed in the office of the secretary of state, conditioned that the employment agency and each member, shareholder, director, or officer of a firm, partnership, corporation, or association operating as such employment agency will conform to and not violate any of the terms or requirements of sections 184.21 to 184.40 or violate the covenants of any contract made by such employment 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.

Subd. 2. The secretary of state shall be paid a filing fee of \$5.

[1967 c 884 s 10; Ex1967 c 1 s 6; 1969 c 82 s 1]

184.31 LICENSES CLASSIFIED. Employment agents' licenses granted under the provisions of sections 184.21 to 184.40 shall be designated as class 1, class 2, class 3, or class 4.

A class 1 license shall entitle the holder thereof to engage in a business of serving those seeking employment and those seeking employees in the unskilled, semi-skilled and skilled manual trades and crafts. It shall also include such various and sundry related occupations which do not require specific formal training for their pursuits. Examples of these would be vehicle drivers, stock clerks, janitors, warehouse laborers, cooks, etc.

A class 2 license shall entitle the holder thereof to engage in a business of serving those seeking employment and those seeking employees in the scientific, technical, executive, administrative, educational, sales, clerical, hospital, medical, dental, and other related pursuits not provided for under either class 1 or a class 3 license.

A class 3 license shall entitle the holder thereof to engage in the business of serving those seeking employment and those seeking employees in circus, vaudeville, theatrical, or other entertainments, exhibitions, or performances, or allied pursuits.

A class 4 license shall entitle the holder thereof to engage in the business of serving those seeking employment to care for children and those seeking employees to care for children.

No employment agent shall engage in the business of serving those seeking employment and those seeking employees included in either class 1, 2, 3 or 4 unless such person shall hold a license entitling him to do so with respect to such specific class; provided, however, that any such employment agent who shall otherwise qualify shall be entitled to a license for each such class upon payment of a fee for each such class in the amount set forth in section 184.29.

Any questions of classification arising under the provisions of sections 184.21 to 184.40 shall be determined by the board.

[1967 c 884 s 11; 1969 c 82 s 2]

184.32 DURATION OF LICENSE. Every license, unless previously revoked, shall remain in force until January immediately following the date of its issue, and every employment agent and counselor shall, upon the filing of a new application and upon payment of the amount of the license fee required and the filing of a new bond, and complying in all respects with the lawful requirements, have issued to it a license for the ensuing year, unless the board shall refuse to do so for any of the reasons stated in this chapter.

[1967 c 884 s 12]

184.33 ISSUANCE OR REFUSAL TO ISSUE; REVOCATION OR SUSPENSION. The department shall issue a license as an employment agent, employment agency manager or counselor to any person who qualifies for such license under the terms of sections 184.21 to 184.40. The department may refuse to issue a license to any person or may suspend or revoke the license of any employment agent, employment agency manager or counselor when it finds that any of the following conditions exist:

(a) That the employment agent or counselor has violated any condition of the bond required by sections 184.21 to 184.40;

(b) That the person, employment agent or counselor has personally engaged in a fraudulent, deceptive, or dishonest practice;

(c) That the person, employment agent or counselor has violated any provisions of sections 184.21 to 184.40;

(d) That the person, employment agent or counselor has been legally adjudicated incompetent and has not been restored to capacity.

This section shall not be construed to relieve any person from civil liability or from criminal prosecution under sections 184.21 to 184.40 or under the laws of this state.

[1967 c 884 s 13; Ex1967 c 1 s 6]

184.34 PROCEDURE FOR THE SUSPENSION OR REVOCATION OF A LICENSE. Subdivision 1. Upon the adjudication of incompetency, revocation shall be automatic and shall be permanent except that in the event of restoration to capacity a license may be reissued to such person on payment of all proper fees.

Subd. 2. In all other cases the department may not refuse to issue a license or suspend or revoke a license under section 184.33 unless it furnishes the person, employment agent or counselor with a written statement of the charges against him and affords him an opportunity to be heard on the charges. He shall be given at least ten days written notice of the date and time of the hearing. The notice shall be sent by certified mail to the address of the person as shown on his application for license or it may be served in the manner in which a summons is served in civil cases commenced in the district court.

Subd. 3. At the time and place fixed for the hearing the department shall hold such hearing and thereafter make its order either dismissing the charges or refusing, suspending or revoking the license. At the hearing the accused shall have the right to appear personally and by counsel and to cross examine witnesses against him, and to produce evidence and witnesses in his defense, and shall have the right to have witnesses subpoenaed, which subpoena shall be issued by the commissioner.

Subd. 4. A stenographic record of all proceedings shall be made and a transcript of such proceedings shall be made if desired by the department or by the accused; provided, that the transcript shall be paid for by the party ordering the same.

[1967 c 884 s 14; Ex1967 c 1 s 6]

184.35 APPEAL TO DISTRICT COURT. If the department refuses to grant a license, or suspends or revokes a license that has been granted, the applicant shall have the right of appeal with a trial de novo to the district court of the county of the applicant's residence; and in the event the applicant is a nonresident of the state, then to the district court for Ramsey county. Such court shall advance such causes on their calendars for early disposition; and in counties having continuous sessions of court, the same shall be heard within 20 days after such appeal shall have been perfected. Such appeal shall be perfected by the service of a written notice of appeal upon the commissioner within 60 days after notice to the applicant of the department's action.

[1967 c 884 s 15; Ex1967 c 1 s 6]

184.36 PLACES OF BUSINESS. Subdivision 1. No employment agent shall open, conduct, or maintain an employment agency at any other place than that specified in the license without first obtaining the consent of the board. Such consent may be withheld for any reason for which an original application might have been rejected, if such place has been mentioned therein. If such consent is given, it shall be endorsed upon the license and, if such license is renewed, such other place shall be substituted for the place originally named in the license. So long as any employment agent shall continue to act as such under his license he shall maintain and keep open an office or place of business at the place specified in the license.

Subd. 2. No counselor shall be employed by any employment agency other than that specified in the license without first notifying the department. When such notification is given, it shall be endorsed upon the license and, if such license is renewed, the name of such other employment agency shall be substituted for the place originally named in the license.

[1967 c 884 s 16; Ex1967 c 1 s 6]

184.37 CONTRACTS WITH APPLICANTS FOR EMPLOYMENT. Every employment agent licensed under a class 2 license 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."

[1967 c 884 s 17]

184.38 RULES GOVERNING AGENCIES. Subdivision 1. In addition to the foregoing rules governing specific classifications, the rules prescribed in this section shall govern each and every employment agent.

Subd. 2. Every license, of whatever classification, shall be hung in a conspicuous place in the main office of the employment agency.

Subd. 3. No fee shall be solicited or accepted as an application of registration fee by any employment agent for the purpose of being registered as an applicant for employment.

Subd. 4. 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 amount of the payment, the date of the payment, and for what it is paid. Every receipt to an applicant by an employment agent shall be numbered and bound in duplicate form. Duplicate copy of each receipt shall be kept at least one year.

Subd. 5. Every employment agent shall keep a record of all services rendered employers and employees. This record shall 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 shall 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. In the event the department has reason to question the detailed report so submitted by the employment agent, the department shall have authority to demand of the employment agent the production of these records for examination by it, or its agent, at such place as the department may designate.

Subd. 6. No employment agent shall 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 48 hours of demand, any sums paid by the applicant for transportation in going to and returning from the place. Nothing in this chapter shall be construed to prevent an employment agent 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 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 shall be liable to any applicant as provided in this rule.

Subd. 7. No employment agent shall, by himself, or by his agent or agents, solicit, persuade, or induce any employee to leave any employment in which the employment agent or his agents has placed the employee, nor shall any agent, by himself or through any of his agents, persuade or induce or solicit any employer to discharge any employee.

Subd. 8. No employment agent shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for help or for obtaining work or employment.

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

Subd. 10. No employment agent 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 has knowledge that such condition exists.

Subd. 11. Any person, firm, or corporation who shall split, divide, or share, 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, shall be punished by a fine of not less than \$100, and not more than \$1,000, or on failure to pay such fine by imprisonment for a period not to exceed one year, or both, at the discretion of the court.

Subd. 12. "Temporary position" means a position lasting less than 90 days, and "permanent position" means a position lasting 90 days or more. A permanent position becomes temporary where the employee is discharged within 90 days for any reason other than misconduct. Intermittent employment on certain days each week or month shall be designated as temporary employment, and no fee shall be charged on earnings in such employment after 90 days from the first day of such employment, nor after an interruption in such employment of more than 30 days within such 90 day period. A position presumed to be permanent, but which is contingent upon satisfactory service, shall continue to be presumed permanent until the employee is discharged before 90 days.

Where a temporary position merges into a permanent position, or where an employee accepts a permanent position within 90 days after termination of a temporary position, such permanent position may be considered the result of the reference to the temporary position and the fee based on such permanent position, due credit being given for money paid for the temporary position.

Subd. 13. When a permanent position becomes a temporary position as defined in subdivision 12 the employment agent shall forthwith refund to the employee any amount paid by said employee in excess of a temporary position employment charge.

Subd. 14. The schedule of fees for all positions must be filed with the department. No change in fees shall be effective until 30 days after filing with the department.

Subd. 15. Any note having as consideration the payment of an employment agency fee shall contain the following statement: "NOTE FOR EMPLOYMENT AGENCY FEE." The defense of no or insufficient consideration shall be good as against a holder in due course of any such employment agency fee note.

[1967 c 884 s 18; *Ex*1967 c 1 s 6]

184.39 THEATRICAL AGENCIES; DUPLICATES OF APPLICATION FOR ENGAGEMENTS. Every employment agent conducting a theatrical agency who shall procure for or offer to an applicant a theatrical engagement shall have executed, in duplicate, a contract containing the name and address of the applicant, the name and address of the employer, and of the employment agent acting for such employer; the time and duration of such engagement; the amount to be paid to such applicant; character of entertainment to be given or services to be rendered, and the name of the person by whom the transportation is to be paid. One of such duplicate contracts shall be delivered to the person engaging the applicant and the other shall be delivered to the applicant. The employment agency procuring the engagement for such applicant shall keep on file, or enter in a book provided for that purpose, a copy of such contract.

[1967 c 884 s 19]

184.40 EXISTING AGENCIES, CONTINUATION. All employment agents and counselors who are actually engaged in or act as employment agents or counselors and all members, shareholders, officers, and directors of a firm, partnership, association, or corporation actively engaged in the business of an employment agency on the effective date of Laws 1967, Chapter 884, shall be deemed to comply with the provisions of sections 184.21 to 184.40 provided they shall obtain a license as provided by sections 184.21 to 184.40 within a period of six months from the effective date of Laws 1967, Chapter 884. All such employment agents and counselors and members, shareholders, officers, and directors of a firm, partnership, corporation, or association actively engaged in the business of an employment agency shall be entitled to a license within such six month period without meeting the requirement of successfully taking and completing the examination provided for herein upon complying with all other provisions of sections 184.21 to 184.40; provided, however, that any employment agent licensed pursuant to Minnesota

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Statutes 1965, Chapter 184, on the effective date of Laws 1967, Chapter 884, shall receive a credit applicable to the license fee required to be paid by such employment agent hereunder in an amount equal to that portion of the license fee paid pursuant to Minnesota Statutes 1965, Chapter 184, applicable to the unexpired portion of the year for which such fee was paid.

[1967 c 884 s 20]