

## 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, association, or job listing service 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. Any party performing the services of an employment agency as herein defined, is not an employment agency if the performance of these services is peripheral to the primary business of that party, and if no part of any fees or compensation is paid by the person seeking employment unless that party has an employee, officer, department or division whose primary responsibility is providing employment services to clients. The term "employment agency" does not include any exclusively teacher or exclusively nurse or exclusively medical doctor placement service, theatrical, booking, modeling, babysitting agency, educational or labor organization, resume service, newspaper, magazine, trade or professional journal

or like publication of general circulation, the main purpose of which is dissemination of news, reports, trade, or professional information. 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.

Subd. 9. **Job order.** The term "job order" means a statement either written or oral by any employer to an agency, the purpose of which is to notify the agency of a job opening with that employer and to request that the agency provide the employer with applicants for interview or employment. All information concerning the availability, features, or requirements of a job shall be considered part of the job order.

Subd. 10. **Character.** "Character" includes components of an applicant's ability to be an agent; such as, moral character, education, business integrity, fiscal integrity, training and knowledge of the employment business, capability of staff, and the extent of participation in operating the agency.

Subd. 11. **Premises.** "Premises" means the location and size of the place of business, the neighborhood, public access, lease, purchase of premises, or other physical arrangements.

Subd. 12. **Job listing service.** "Job listing service" means any employment agency in the business of matching applicants with employment opportunities through providing a list of employers or list of job openings or like publications or lists of applicants for distribution to potential employers, where a fee or valuable consideration is exacted from the applicant. An employment agency operating exclusively as a "job listing service" is not engaged in the placement of applicants.

Subd. 13. **Concurrent fee.** "Concurrent fee" means a fee charged to an applicant for providing a list of employers or list of job openings or like publications and the fee is not contingent upon actual hiring, but for the information provided by the agency.

**History:** 1967 c 884 s 1; Ex1967 c 1 s 6; 1973 c 780 s 1; 1974 c 423 s 1,2; 1976 c 60 s 1; 1980 c 452 s 1; 1986 c 444; 1988 c 659 s 3-5

## 184.22 LICENSES REQUIRED.

Subdivision 1. **Individuals; separate locations.** No person shall engage in the business of or act as an employment agent or counselor unless a license from the department is first obtained. Each separate location for the business of an employment agency or for employment counseling shall have a separate agency license and a licensed manager who shall have immediate control of only one location.

Subd. 2. **Exemptions.** Except as otherwise specifically provided, the provisions of sections 184.21 to 184.41 do not apply to any person, firm, corporation, partnership, or association engaged in the business of a management consultant, management search consultant or personnel consulting firm (hereafter "search firm") if: (1) the search firm is retained by, acts on behalf of and is only compensated by the employer, pursuant to

a written or oral agreement specifying the position to be filled; (2) in no instance will any individual candidate who is identified, appraised or recommended by the search firm for 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; (3) in no instance does the search firm or its agents solicit, persuade or induce any individual to terminate employment with an employer with whom the search firm has placed that individual; and (4) the search firm 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 must include, in addition to other information the commissioner by rule 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 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. If an employment agency offers services which are the same or similar to those offered by a search firm, or 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 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.

**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.

**Subd. 4. Continued exemption.** A search firm exempted under subdivision 2 prior to August 1, 1983 is not subject to the provisions of section 184.29, 184.30, 184.37, or 184.38.

**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.

**History:** 1967 c 884 s 2; Ex1967 c 1 s 6; 1971 c 95 s 1; 1974 c 423 s 3; 1979 c 5 s 1; 1982 c 424 s 130; 1983 c 375 s 1-4; 1986 c 444

#### 184.23 ADVISORY TASK FORCE CREATED.

**Subdivision 1.** The commissioner of labor and industry may appoint an employment agency advisory task force to advise the department as to the administration of the provisions of sections 184.21 to 184.40. If appointed, a majority of members 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.** [Repealed, 1975 c 315 s 26]

**Subd. 3.** The task force shall expire and the terms, compensation and removal of members shall be as provided in section 15.059.

**History:** 1967 c 884 s 3; Ex1967 c 1 s 6; 1971 c 95 s 2; 1975 c 271 s 6; 1975 c 315 s 15,16; 1983 c 260 s 46

**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 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 this chapter and Laws 1971, chapter 95 by employment agents and counselors and to examine the offices where business is or shall be conducted by them. The department shall have the right to investigate all advertisements, communications and materials published, disseminated, circulated, or placed before the public by an employment agency or counselor, for the purpose of determining whether the provisions of section 325F.67 or 184.38, subdivision 8 have been violated.

**History:** 1967 c 884 s 4; Ex1967 c 1 s 6; 1971 c 95 s 3; 1985 c 248 s 70

**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.

**History:** 1967 c 884 s 5; Ex1967 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 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 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 the applicant 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 or resident alien and shall be at least 18 years of age. An applicant for a counselor's license shall be at least 18 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 employment 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, the person 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.

**History:** 1967 c 884 s 6; Ex1967 c 1 s 6; 1973 c 725 s 36; 1974 c 423 s 4; 1984 c 609 s 12; 1986 c 444

#### **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.

**History:** 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 issues a license, 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 rules 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 the 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. The examination fee of \$10 shall cover the costs of preparing and printing the examinations and the cost of giving each person taking the examination a copy of the latest rules. Rules shall be kept on the premises readily available to the counselor, manager, or agent.

**History:** 1967 c 884 s 8; Ex1967 c 1 s 6; 1971 c 95 s 4; 1985 c 248 s 70; 1986 c 444

#### 184.29 FEES.

Before a license is granted to an applicant, 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.
- (c) An applicant for a counselor's license shall pay a license fee of \$10 and a renewal fee of \$5.
- (d) An applicant for an employment agency manager's license shall pay a license fee of \$10 and a renewal fee of \$5.

**History:** 1967 c 884 s 9; 1974 c 423 s 5; 1983 c 375 s 5

#### 184.30 BONDS.

Subdivision 1. Every application for an employment agency's license, 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 amount of \$10,000 for each location. 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 an employment agency will comply with the provisions of sections 184.21 to 184.40 and any contract made by the employment agent in the conduct of the business. A person damaged by a breach of any condition of the bond may bring an action on the bond, and successive actions may be maintained on it.

Subd. 2. The secretary of state shall be paid a filing fee of \$10.

**History:** 1967 c 884 s 10; Ex1967 c 1 s 6; 1969 c 82 s 1; 1974 c 423 s 6; 3Sp1981 c 2 art 1 s 27; 1983 c 375 s 6

**184.31** [Repealed, 1974 c 423 s 16]**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 department shall refuse to do so for any of the reasons stated in this chapter. Applications for the renewal of an agency license shall be in the office of the department of labor and industry no later than 30 days prior to the expiration of the license and must be accompanied by the remittance prescribed by law, a bond filing fee, and a surety bond in the amount of \$10,000.

**History:** 1967 c 884 s 12; 1971 c 95 s 6; 1974 c 423 s 7

**184.33 ISSUANCE OR REFUSAL TO ISSUE; REVOCATION OR SUSPENSION.**

Subdivision 1. 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 an employment agency license whenever, after due investigation, the department 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 is found upon investigation to be unfit for such use. No agency license shall be issued to any person, firm, corporation or association that has, within the past three years, been convicted in any court of fraud or felony. No license shall be issued to any attorney whose license to practice law has been suspended or revoked, for a period of three years after the date of such suspension or revocation. 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.

Subd. 2. 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. A violation of this section shall be treated as a violation of section 325F.69.

**History:** 1967 c 884 s 13; Ex1967 c 1 s 6; 1973 c 780 s 5; 1974 c 423 s 8; 1986 c 444

**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 and affords an opportunity to be heard on the charges. At least ten days written notice of the date and time of the hearing shall be given. The notice shall be sent by certified mail to the address of the person as shown on the 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, and to produce evidence and witnesses in 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.

**History:** 1967 c 884 s 14; Ex1967 c 1 s 6; 1986 c 444

#### 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 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.

**History:** 1967 c 884 s 15; Ex1967 c 1 s 6; 1974 c 423 s 9

#### 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 department. 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 a license the agent 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.

**History:** 1967 c 884 s 16; Ex1967 c 1 s 6; 1971 c 95 s 7; 1986 c 444

#### 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. Every employment agent engaged in the placement of applicants shall also include on either the face or the back of the contract 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.

**History:** 1967 c 884 s 17; 1974 c 423 s 10; 1983 c 375 s 7; 1988 c 659 s 6



**184.38 RULES GOVERNING AGENCIES.**

Subdivision 1. In addition to the foregoing rules, the rules prescribed in this section shall govern each and every employment agent.

Subd. 2. The agency license shall be hung in a conspicuous place in the 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, nor shall any other money be solicited or accepted for any reason prior to the actual start date, other than fees earned through concurrent fee arrangements in which the fee charged is not contingent upon actual placement of an applicant.

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, 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. Every employment agent engaged in the placement of applicants shall also keep a record of kind of position accepted by the employee. 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. (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.

(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 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.

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

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.

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

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 the agent or firm has knowledge that such condition exists.

Subd. 11. No employment agency or its employee may split, divide, or share, directly or indirectly, any fee, charge, or compensation received from any employer or applicant with any employer, or person in any way connected with the employer's business. 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 \$3,000, or on failure to pay the 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, within five calendar days, 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.

Subd. 16. Every employment agent shall notify the department within ten days of any change in the address where such agent conducts business, and shall notify the department within ten days when the employment agent can no longer be reached at the last business address given to the department.

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 its 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 its employment agency or search firm business.

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.

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 the position, provided that the applicant did not actually start the job.

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.

**History:** 1967 c 884 s 18; Ex1967 c 1 s 6; 1971 c 95 s 8; 1973 c 780 s 2-4; 1974 c 423 s 11-14; 1977 c 220 s 1; 1983 c 375 s 8-16; 1984 c 628 art 3 s 11; 1986 c 444; 1988 c 659 s 7,8

**184.39** [Repealed, 1974 c 423 s 16]

#### **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 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.

**History:** 1967 c 884 s 20

#### **184.41 VIOLATIONS.**

Any person who engages in the business of or acts as an employment agent or counselor without first procuring a license as required by section 184.22, any employment agent, manager, or counselor who violates the provisions of this chapter, 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 bring an action for an injunction against any person who engages in the business of or 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, counselor, or search firm who violates the applicable provisions of this chapter. If an agency, manager, 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, counselor, or search firm.

**History:** 1971 c 95 s 9; 1974 c 423 s 15; 1983 c 375 s 17