

No. 220

AN ACT

SB 1379

Amending the act of July 31, 1941 (P.L.616), entitled "An act defining, regulating and providing for the licensing and registration of employment agents, and their representatives, including private employment agents, theatrical employment agencies and nurses' registries; providing for revocation and suspension of licenses and registrations subject to appeal and for their reinstatement; defining the powers and duties of the Department of Labor and Industry and the Department of Public Instruction; providing penalties, and repealing existing laws," changing certain definitions, the application of the term employment agent, the contents of applications for licenses, the limitations on the issuance thereof, reclassifying licensees, providing the procedure covering violations of the act and penalties therefor, further defining the powers and duties of employment agents and the Department of Labor and Industry creating the Employment Agency Advisory Council, and repealing certain provisions concerning suspension and revocation of licenses, duties of employment agents, disposition of fees and penalties for violations of the act.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Clause (11) of section 2, act of July 31, 1941 (P.L.616), known as the "Employment Agency Law," is amended to read:

Section 2. Definitions.—The following terms shall, unless the context otherwise indicates, have the following respective meaning:

* * *

(11) [**"Representative" as used in this act means any employe who solicits business and arranges or becomes a party to contracts between employers and employe clients.**] *"Representative" or "counselor" as used in this act shall mean an employe who solicits business or interviews applicants or refers them to prospective employers for employment.*

* * *

Section 2. Section 3 of the act is amended by adding a clause to read:

Section 3. The term "employment agent" as used in this act shall not apply to:

* * *

(8) *Consultants or agencies who charge no fees to the applicant for registration or employment and who do not require the applicant to enter into any contractual agreements with the agency or consultant.*

Section 3. Section 5 of the act is amended to read:

Section 5. (a) Every person desiring to operate as an employment agent shall file, **for each physical location**, an application for a license with the department. The **original** application shall be on a form furnished by the department and shall state:

(1) The name and street address of the applicant.

(2) The address of the place where the business is to be conducted.

[(3) Whether or not the applicant proposes to conduct a lodging house for the unemployed separate from the business proposed to be conducted.]

(4) The business or occupation engaged in by the applicant for at least two years immediately preceding the date of the application.

(5) Whether or not the applicant is pecuniarily interested in any other business of like nature and, if so, where.

(6) Whether the applicant is the only person pecuniarily interested in the business to be carried on under the license.

(7) If the applicant is a corporation, the names and addresses of the officers of said corporation.

(8) If the applicant is a partnership, the names of all partners therein.

Such application shall be accompanied by the affidavit of three persons of business or professional integrity residing within the Commonwealth of Pennsylvania. Such affiants shall state that the affiants have known the applicant for a period of two years, that the applicant is a person of good moral character and is a citizen of the United States.]

(3) The educational and business or employment history of the applicant.

(4) Whether or not the applicant is pecuniarily interested in any other business of like nature and, if so, where.

(5) Whether the applicant is the only person pecuniarily interested in the business to be carried on under the license.

(6) If the applicant is a corporation, the names and addresses of the officers of said corporation.

(7) If the applicant is a partnership, the names of all partners therein.

(8) Whether the applicant has a criminal record.

(9) That the applicant is fully aware of all applicable provisions of the act of October 27, 1955 (P.L.744), the "Pennsylvania Human Relations Act," as amended, and that the applicant has knowledge of the penalties that may be imposed for violation of this act.

(b) No licensed employment agent shall permit any person not mentioned in the original application for a license to become a partner, if such agency is a partnership, or an officer of the corporation, if such agency is a corporation, unless the written consent of the department shall first be obtained. Such consent may be withheld for any reason for which an original application might have been rejected if the person in question had been mentioned therein.

Section 4. Section 9 of the act is amended to read:

Section 9. No such license shall be granted until the applicant has filed with the secretary a bond of a duly authorized surety company, to be approved by the department, in the penal sum of [one thousand (\$1,000) dollars] *three thousand (\$3,000) dollars* payable to the Commonwealth of Pennsylvania, conditioned that the applicant will comply with the

"application" in original.

provisions of this act and shall pay all damages occasioned to any person by reason of any misstatement, misrepresentation, fraud or deceit or any unlawful act or omission of any such person, his agent or employes, while acting within the scope of their employment, made, committed or omitted in the business conducted under such license, or caused by any other violation of this act in carrying on such business.

All actions upon bonds given under this act shall be in the same manner as actions upon official bonds.

Section 5. Sections 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of the act are repealed.

Section 6. The act is amended by adding sections to read:

Section 10. *No person shall open, keep or carry on any employment agency in the Commonwealth of Pennsylvania unless every such person shall have obtained a license to do so.*

(1) Licenses to be known as class "1" shall be required for employment agents performing services leading a person to employment, payment for such service being entirely contingent upon the employer offering and the applicant accepting employment and the obligation for payment therefore being made in whole or in part by the applicant. The annual license fee shall be the sum of one hundred fifty (\$150) dollars.

(2) Licenses to be known as class "2" shall be required for all modeling and theatrical service agents or bureaus. The annual license fee shall be the sum of one hundred fifty (\$150) dollars.

Section 12. *It shall be unlawful for any person to act or assume to act as an employment agent, counselor or representative without first registering with the department and successfully completing an examination covering the provisions of this act and regulations pertaining thereto.*

Registrations shall be effective and the test satisfactorily completed within thirty (30) days from date of employment with the agency. In the event of failure of the examination, provisions shall be made for retesting within a time specified by the department.

A counselor-in-training may perform whatever duties the agency deems necessary to enable that counselor-in-training to become a registered counselor. However, a counselor-in-training may not actually place applicants nor may that counselor-in-training be paid commissions for making such placements.

A fee of ten (\$10) dollars shall accompany an application for registration. A registration may be renewed each year for an additional fee of ten (\$10) dollars.

It shall be the responsibility of the employment agent and the counselor or representative to maintain current registration.

Section 13. *The department, upon its own motion, or upon the filing with it by any person or by any authority, board or commission of the*

Commonwealth of Pennsylvania of a verified complaint, accompanied by such evidence, documentary or otherwise, as makes out a prima facie case that any registered counselor has violated this act or the regulations pertaining thereto in the performance of his duties, may hold a hearing to determine his continued eligibility for registration.

Any person who violates any provisions of this section or who testifies falsely as to any matter required by the provisions of this section or of this act shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than ten (\$10) dollars, nor more than one hundred (\$100) dollars, or upon nonpayment thereof, to undergo imprisonment for a period of not more than thirty (30) days.

Section 14. It shall be the duty of every employment agent to keep a record of every applicant, job order and job placement. Such records shall be kept in a manner acceptable to the department and shall be open during office hours to inspection by the department and its duly authorized agents. No employment agent or his employes shall knowingly make any false entry in such records.

Section 15. It shall be the duty of the employment agent whenever possible to communicate orally or in writing with at least one of the persons mentioned as reference by any applicant for work in private families or to be employed in a fiduciary capacity, and the result of such investigation shall be kept on file in such agency: Provided, That if the applicant for help voluntarily waives in writing such investigation of references the employment agent shall not be required so to do.

Section 16. Every employment agent shall post in conspicuous place in his agency such sections of this act as may be required by the department, copies of which shall be supplied by the department. He shall also post his license in the main room of the agency. He shall further post the notice entitled, 'Employment Provisions - Pennsylvania Human Relations Act' copies of which can be obtained from the Pennsylvania Human Relations Commission.

Every employment agent shall, under rules to be prescribed by the department, furnish the department upon request statements showing the number of applicants and the number and characters of placements and job orders.

Section 17. If, after verbal and written warnings, an employment agent persists in violating sections 14, 15 and 16 of this act, he shall be charged with a summary offense and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars, or upon nonpayment thereof, to undergo imprisonment for a period of not more than thirty (30) days.

Section 18. Every employment agent conducting a theatrical employment agency, before making a theatrical engagement, except an emergency engagement, shall have a bona fide contract in writing for an employe with any employer for services in any such engagement and

shall prepare and file in such agency a written statement signed and verified by the employment agent setting forth how long such employer has been engaged in the theatrical business. Every such statement shall be kept for the period of one (1) year and shall set forth whether or not such employer, while financially interested in a theatrical business, has failed to pay salaries or has "left stranded" any company, group or employe during the two (2) years preceding the date of application and further shall set forth the names of at least two persons as references. If such employer is a corporation, such statement shall set forth the names of the officers and directors thereof, the length of time such corporation or any of its officers have been engaged in the theatrical business and the amount of the paid up capital stock. If the employer conducts a cabaret or night club the agent shall include in such statement the name and address of the owner or owners and whether they have failed to pay salaries to employes within the past two (2) years. If any allegation in such written verified statement is made upon information and belief the person verifying this statement shall set forth the sources of his information and the reasons for his belief. Such statement shall be kept on file for the benefit of any employes whose services are sought by any such employers.

Every employment agent conducting a theatrical employment agency who shall procure for or offer to an applicant a theatrical engagement or any kind of employment as an entertainer shall have executed in triplicate a numbered contract containing the name, address and signature of the applicant, the name and address and signature of the employer and that of the employment agency acting for such employer in employing or furnishing such applicant for employment, the character of the entertainment to be given or services to be rendered, the number and time of performances to be given per day or per week, time of rehearsal, by whom the transportation, if any, is to be paid, and, if it is to be paid by the applicant, either the cost of the transportation between the places where said entertainment or services are to be given or rendered or the average cost of such transportation. The contract shall state from whom said applicant is to receive his or her salary, board and lodging, the amount of salary promised and the gross commissions or fees to be paid by the applicant and to whom such gross commissions or fees are to be paid. The original contract shall be given to the applicant for employment; the duplicate contract shall be given to the employer, and the triplicate contract shall be kept on file in the office of the agency for a period of one (1) year.

Such numbered contracts shall contain no other conditions and provisions except such as are equitable among the parties thereto and do not constitute an unreasonable restriction of business.

Section 19. Every employment agent conducting a nurses' registry shall cause every applicant for employment to fill out an application

form giving the following information: the name and address and qualifications of such applicant; the names and places of the hospitals wherein the applicant has studied or has been employed; the length of time of service therein or other experiences in nursing if not in a hospital; and whether such applicant is a graduate trained, certified, registered, undergraduate or practical nurse or trained attendant. There shall be stated on such application the number and date of the certificate issued to such nurse or trained attendant by the Department of Education. Such application form shall be kept on file in the office of the registry and shall be open to the inspection of the Department of Labor and Industry and the Department of Education.

Section 20. (a) No employment agent shall induce or attempt to induce any employe to leave his employment with a view to obtaining other employment through such employment agent.

(b) No employment agent or his representative shall demand, divide, or offer to divide or share directly or indirectly any fees, charge or compensation, received or to be received from any employe, with any employer or person in any way connected with the business thereof.

(c) No employment agency shall accept promissory notes or any other evidence of indebtedness without recourse. No subsequent holder shall be deemed a holder in due course. A violation of this section shall constitute a summary offense under this act.

(d) No employment agent shall publish or cause to be published any false or fraudulent or misleading information, representation, notice or advertisement. All advertisements of such employment agent by means of cards, circulars or signs and in newspapers or other publications, and all letterheads, receipts and blanks shall be printed and ¹contain the name and address of such employment agent and the words "employment agency."

(e) No employment agent shall give any false information or make any false promise or false representation concerning an engagement or employment to any employer or to any applicant who shall register or apply for an engagement or employment or help.

(f) No employment agent shall send or cause to be sent any person as a servant, employe, entertainer or performer, to any place of bad repute, house of ill fame, or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purpose of prostitution, or gambling house, the character of which the employment agent could have ascertained upon reasonable inquiry.

(g) No employment agent shall send out any applicant for employment without making a reasonable effort to investigate the character of the employer.

(h) No such employment agent shall send out any applicant for

¹"contained" in original.

employment without having obtained a bona fide order therefor. For the purposes of this act, a bona fide job order shall include the following information:

- (1) Name and address of employer seeking applicant.*
- (2) Full name and position of person giving job order.*
- (3) Name of person accepting job order on behalf of employment agent.*
- (4) Date on which job order is accepted.*
- (5) Location for which applicant is requested.*
- (6) Job title.*
- (7) Job description.*
- (8) Starting salary range (commissions, bonuses, draw).*
- (9) Fee policy of employer.*
- (10) Educational and experience requirements for particular position.*

(i) No employment agent shall advertise any position unless such employment agent has a bona fide job order for said position.

(j) No employment agent or his representatives shall send any applicant to any place where a strike, a lock out or other labor trouble exists without first notifying the applicant of such conditions, and shall in addition thereto enter a complete statement of such facts upon the receipt given to such applicant.

(k) No employment agent or representative shall, when acting in the capacity of either an employer or an employment agent or representative, engage in any policies or practices deemed to be unlawful discriminatory practices by the act of October 27, 1955 (P.L. 744), the "Pennsylvania Human Relations Act," as amended.

(l) Every employment agent shall give to each applicant who signs a contract, a copy of said contract at the time of application.

(m) No employment agent shall charge a fee for its services until the applicant has accepted a position. "Accept a position" shall mean that an applicant has actually reported for work having met all of the conditions of employment, or has a definite agreement with an employer concerning starting date, starting salary (including bonuses, commissions, etc.) and duties.

For a position known to be of a duration of ten (10) weeks or less or for a position that the applicant loses within a period of ten (10) weeks after the starting date, the fee will be a maximum of ten (10%) percent of the amount earned, except if the applicant fails to report as agreed or resigns to accept employment elsewhere, then the agency shall be entitled to its full fee.

(n) No employment agent shall charge a registration fee. Any person who violates any provision of this section is guilty of a summary offense and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred (\$100) dollars nor more than five hundred

(\$500) dollars, or, in default of payment, shall undergo imprisonment for a period of not more than thirty (30) days.

Section 21. If, after conviction of any violation of this act or the rules and regulations pertaining thereto, an employment agent persists in violating this act and the rules and regulations pertaining thereto, by three (3) or more convictions in any twenty-four-month period, the department may suspend the license of said agent after hearing upon due notice to the holder of such license. The period of such suspension shall be at the discretion of the department, but in any case shall not be less than ten (10) calendar days nor exceed ninety (90) days. Upon order of suspension of the license, the employment agent shall immediately deliver the license to the department and shall cease and desist all activity as an employment agent for the duration of the suspension.

Any person who violates the provision of this section is guilty of a summary offense and upon conviction thereof shall be sentenced to pay a fine of not less than two hundred (\$200) dollars, nor more than five hundred (\$500) dollars and in addition thereto, the license of such employment agent may be revoked at the request of the department.

Section 22. Any person who violates any provision of this act or the rules and regulations pertaining thereto for which no other specific penalty is provided shall be guilty of a summary offense and upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred (\$100) dollars nor more than five hundred (\$500) dollars, or to, on default in the payment thereof, undergo imprisonment for a period of not more than thirty (30) days.

Section 23. As an alternative, supplemental and additional remedy in cases of unlawful practices, the department may institute proceedings in the court of common pleas of the county wherein such business is located asking for the revocation of such license.

Whenever a license shall be revoked, the department shall not, within one (1) year, of such revocation, issue another license to such person. No such person shall be employed during such period by any other employment agent.

Section 24. There is hereby created in the Department of Labor and Industry an Employment Agency Advisory Council consisting of seven (7) members to be appointed for a term of two (2) years by the secretary to assist him in carrying out his duties under this act and for the purpose of conducting public hearings at the request of the secretary to recommend rules and regulations for the implementation of this act.

The members of the advisory council shall, insofar as possible, be geographically representative of the various segments of the private employment agency business, one from the Eastern Pennsylvania area, one from the Central Pennsylvania area, one from the Western Pennsylvania area, one from the Bureau of Consumer Protection, one from the Department of Labor and Industry and two citizens of the

Commonwealth of good repute. The council shall organize and elect a chairman and thereafter meet upon the call of the chairman or a majority of the members. Each member of the council shall receive thirty (\$30) dollars per day plus necessary expenses for each day actually spent in the performance of his duty.

The council shall have the power and duty to:

(1) Consult with the secretary concerning any matter arising under the administration of this act.

(2) Conduct hearings at the request of the secretary to develop rules and regulations for the implementation of this act.

(3) Advise the secretary on matters pertaining to the private employment agency industry.

Section 25. The secretary shall be charged with the enforcement of the provisions of this act and shall have power to make and enforce such reasonable rules and regulations for the conduct of the business of employment agents as may be necessary to carry out the laws relating thereto. For the purpose of enforcing this act, the secretary shall appoint inspectors who shall have power to execute and serve all warrants and processes of law issued by any justice of the peace, alderman and magistrate or by any court of competent jurisdiction in the same manner as sheriffs, constables or police officers may serve and execute such processes. Such inspectors may arrest on view and without warrant any unlicensed person detected by them violating any of the provisions of this act and may take such person so offending before any justice of the peace, alderman or magistrate and there make a complaint against him.

Section 26. All registers, books, records and other papers required by this act to be kept by any employment agent shall be open at all reasonable hours to the inspection of the department and its inspectors. An auditor may be sent to the office of any employment agent by the department at least once a year, or more often if necessary, to obtain information for the use of the department.

Section 27. All moneys or fees required to be paid under this act shall be collected by the department and by it paid into the State Treasury through the Department of Revenue.

Section 7. This act shall take effect thirty days after its enactment.

APPROVED—The 16th day of October, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly
No. 220.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive style with a large initial "C" and a long, sweeping underline.

Secretary of the Commonwealth.