

§ 95-47.3A. Fee reimbursement from employers due to overstated earnings expectations.

(a) An applicant who accepts employment that is compensated in whole or in part on a commission basis, and who pays a fee to the licensee calculated on the commission-based compensation amount stated by the employer in the written job order, may file a written complaint with the Commissioner if the applicant did not earn at least eighty percent (80%) of the compensation amount stated by the employer in the written job order. If the applicant files the written complaint before the period upon which the anticipated earnings is based has ended, the Commissioner shall prorate the amount earned over the period of time the applicant worked prior to the filing of the complaint in order to determine whether or not the applicant earned at least eighty percent (80%) of the compensation amount stated by the employer in the written job order.

(b) The Commissioner shall investigate all complaints filed pursuant to subsection (a) of this section. After completion of the investigation and a hearing, the Commissioner shall order the employer to reimburse the applicant for part or all of the fee paid by the applicant to the licensee if the Commissioner finds the applicant is entitled to the refund based on all of the following:

- (1) The applicant did not earn at least eighty percent (80%) of the compensation amount stated by the employer in the written job order;
- (2) The licensee reasonably relied on the compensation information provided by the employer in calculating the fee paid by the applicant;
- (3) It is unrealistic to expect that an employee could earn substantially the amount of commission-based compensation stated by the employer in the written job order filed with the licensee; and
- (4) The fee paid by the applicant to the licensee was calculated based on the commission-based compensation stated by the employer in the written job order.

(c) The reimbursement due the applicant under subsection (b) shall be the difference between the fee actually paid by the applicant to the licensee, and the fee that the applicant would have paid if the compensation stated by the employer in the written job order had been what the applicant actually earned or reasonably could have earned during the applicable employment period.

(d) The Commissioner shall adopt rules setting forth procedures for complaints and investigations, and standards for determining whether a statement by the employer in the licensee's written job order of potential or anticipated commission-based earnings is realistic under the circumstances. The Commissioner or his authorized representative shall have power to administer oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and take depositions and affidavits in any proceeding hereunder. Additionally, the Commissioner shall adopt rules setting forth procedures for enforcement of any order made under subsections (b) and (c) of this section. Rules adopted by the Commissioner pursuant to this section shall be in accordance with Chapter 150B of the General Statutes.

(e) The Commissioner shall enforce and administer the provisions of this section, and the Commissioner or his authorized representative is empowered to hold hearings and to institute civil proceedings to collect on behalf of the applicant any amounts determined to be owed by the employer. (1991 (Reg. Sess., 1992), c. 970, s. 3.)