

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

S

1

SENATE BILL 1044

Short Title: Private Personnel Services Fees.

(Public)

Sponsors: Senator Dalton.

Referred to: Commerce.

April 21, 1997

A BILL TO BE ENTITLED

AN ACT TO ALLOW PRIVATE PERSONNEL SERVICES TO CHARGE APPLICANTS A REGISTRATION FEE AND TO REQUIRE THAT SUCH SERVICES POST A SECURITY BOND COVERING THE REFUND OF REGISTRATION FEES WITH THE DEPARTMENT OF LABOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-47.1 reads as rewritten:

"§ 95-47.1. Definitions.

As used in this Article, unless the context clearly requires otherwise: The following definitions apply in this Article:

- (1) "Accept" ~~employment means to~~ Accept employment. – To accept an employer's offer of employment or to begin work for an employer.
- (2) "Applicant," ~~except Applicant.~~ – Except where it refers to an applicant for a private personnel services license, ~~means the term means~~ any person who uses or attempts to use the services of a private personnel service in seeking employment.
- (3) " ~~Commissioner~~" ~~means the~~ Commissioner. – The North Carolina Commissioner of Labor or any person designated by the Commissioner as the representative of the Commissioner.

- 1 (4) "~~Complaint~~" means a Complaint. – A communication to the  
2 Commissioner or department alleging facts that could support issuance  
3 of a warning or citation under G.S. 95-47.9.
- 4 (5) "~~Contract~~" means any Contract. – Any agreement between a private  
5 personnel service and an applicant obligating the applicant to pay a fee  
6 or any agreement subsequent to such a contract reducing the obligations  
7 of the private personnel service to the applicant under the contract.
- 8 (6) "~~Employee~~" means a Employee. – A person performing work or services  
9 of any kind or character for compensation.
- 10 (7) "~~Employer~~" means a Employer. – A person employing or seeking to  
11 employ a person for compensation, or any representative or employee of  
12 such employer.
- 13 (8) "~~Employment~~" means any Employment. – Any service or engagement  
14 rendered or undertaken for wages, salary, commission, or other form of  
15 compensation.
- 16 (9) "~~Fee~~" means anything Fee. – Anything of value, including money or other  
17 valuable consideration or services or the promise of any of the  
18 foregoing, required or received by a private personnel service, in  
19 payment for any of its services, or act rendered or to be rendered by any  
20 private personnel service.
- 21 (10) "~~Interview~~" means a Interview. – A meeting between an employer and an  
22 applicant to discuss potential employment.
- 23 (11) "~~Job order~~" means an Job order. – An oral or written communication  
24 from an employer authorizing a private personnel service to refer  
25 applicants for a position the employer has available.
- 26 (12) "~~Licensee~~" means any Licensee. – Any person licensed by the  
27 Commissioner to operate a private personnel service.
- 28 (13) "~~Manager~~" of a private personnel service means the Manager. – The person  
29 who is responsible for the operation of an office of a private personnel  
30 service.
- 31 (14) "~~Owner~~" of a private personnel service means the Owner. – The sole  
32 proprietor of a private personnel service operated as a sole  
33 proprietorship; any partner in a partnership that owns or operates a  
34 private personnel service; any stockholder with a financial interest  
35 greater than 10 percent (10%) in a corporation that owns or operates a  
36 private personnel service.
- 37 (15) "~~Person~~" means any Person. – Any individual, association, partnership or  
38 corporation.
- 39 (16) "~~Private personnel service~~" means any Private personnel service. – Any  
40 business operated in the State of North Carolina by any person for profit  
41 which secures employment or by any form of advertising holds itself  
42 out to applicants as able to secure employment or to provide information  
43 or service of any kind purporting to promote, lead to or result in

1 employment for the applicant with any employer other than itself, where  
2 any applicant may become liable for the payment of a fee to the private  
3 personnel service, either directly or indirectly. 'Private personnel  
4 service' does not include:

- 5 a. Any educational, religious, charitable, fraternal or benevolent  
6 organization which charges no fee for services rendered in  
7 securing employment or providing information about  
8 ~~employment; employment.~~
- 9 b. Any employment service operated by the State of North  
10 Carolina, the Government of the United States, or any city,  
11 county, or town, or any agency ~~thereof; thereof.~~
- 12 c. Any temporary help service that at no time advertises or  
13 represents that its employee may, with the approval of the  
14 temporary help service, be employed by one of its client  
15 companies on a permanent basis and which does not act as a  
16 private personnel service or an employer fee paid personnel  
17 ~~service; service.~~
- 18 d. Any newspaper of general circulation or other business engaged  
19 primarily in communicating information other than information  
20 about specific positions of employment and that does not purport  
21 to adapt the information provided to the needs or desires of an  
22 individual ~~subscriber; subscriber.~~
- 23 e. Employment offices that charge no fee to the applicant other than  
24 union dues or to the employer and which are used solely for the  
25 hiring of employees under a valid union contract by the employer  
26 subscribing to this ~~contract; contract.~~
- 27 f. Any employer fee paid personnel consulting service or temporary  
28 help service that offers temporary to permanent placement when  
29 the service operates on a one hundred percent (100%) employer  
30 fee paid service basis, requires no applicant placement contract,  
31 and has no recourse against an applicant for a fee under any  
32 circumstances.

33 (17) ~~"Refer" an applicant means to Refer. – To submit applicants' resumes to~~  
34 ~~an employer, arrange interviews between an applicant and an employer,~~  
35 ~~or to provide an employer with the name of an applicant.~~

36 (18) Registration fee. – The fee paid by an applicant to a licensee for  
37 information or services that might lead to or result in employment for  
38 the applicant. The term 'registration fee' does not include charges for  
39 employment placement services."

40 Section 2. G.S. 95-47.2(j) reads as rewritten:

41 "(j) Each licensee shall, before the license is issued or ~~renewed; renewed and before~~  
42 any registration fees are accepted, deposit with the department a bond payable to the  
43 State of North Carolina and executed by a surety company duly authorized to transact

1 business in the State of North Carolina in the amount of ten thousand dollars (\$10,000) or  
2 an amount sufficient to refund all unearned registration fees, whichever is greater, and  
3 upon condition that the private personnel service will pay to applicants all refunds due  
4 under this Article and regulations adopted hereunder if the private personnel service fails  
5 to render services covered by the registration fee or terminates its business."

6 Section 3. G.S. 95-47.6 reads as rewritten:

7 "**§ 95-47.6. Prohibited acts.**

8 A private personnel service shall not engage in any of the following activities or  
9 conduct:

- 10 (1) Induce or attempt to induce any employee placed by that private  
11 personnel service to terminate his employment in order to obtain other  
12 employment through the private personnel service; or procure or attempt  
13 to procure the discharge of any person from his employment.
- 14 (2) Publish or cause to be published any false or fraudulent information,  
15 representation, promise, notice or advertisement.
- 16 (3) Advertise in newspapers or otherwise, unless the advertising contains  
17 the name of the private personnel service and the word 'personnel  
18 service'.
- 19 (4) Direct an applicant to visit or call upon an employer for the purpose of  
20 obtaining employment without having first obtained a job order or  
21 authorization from the employer for the interview. A private personnel  
22 service may attempt to sell the services of an applicant to an employer  
23 from whom no job order has been received and may charge a fee if the  
24 efforts result in the applicant's being employed.
- 25 (5) Send or cause to be sent any person to any employer where the private  
26 personnel service knows that the prospective employment is or would  
27 be in violation of State or federal laws governing minimum wages or  
28 child labor, or has been notified that a labor dispute is in progress,  
29 without notifying the applicant of that fact, or knowingly arrange an  
30 interview for an employment or occupation prohibited by law.
- 31 (6) Send or cause to be sent any person to any place which the private  
32 personnel service knows is maintained for immoral or illicit purposes.
- 33 (7) Divide or share, either directly or indirectly, the fees collected by the  
34 private personnel service, with contractors, subcontractors, employers or  
35 their agents, foremen or anyone in their employ, or if the contractors,  
36 subcontractors or employers be a corporation, any of the officers,  
37 directors or employees of the corporation to whom applicants for  
38 employment are sent.
- 39 (8) Make, cause to be made, or use any name, sign or advertising device  
40 bearing a name which is similar to or may reasonably be confused with  
41 the name of a federal, State, city, county or other governmental unit or  
42 agency.

- 1           (9)    Knowingly make any false or misleading promise or representation or  
2           give any false or misleading information to any applicant or employer in  
3           regard to any employment, work or position, its nature, location,  
4           duration, compensation or the circumstances surrounding any  
5           employment, work or position including the availability thereof.
- 6           (10)   Accept a registration fee from an ~~applicant~~-applicant, unless the private  
7           personnel service has on deposit with the Commissioner a security bond  
8           that is sufficient to cover the refund of any unearned registration fees.
- 9           (11)   Impose or attempt to collect any fee from any applicant unless that  
10          applicant accepts employment with an employer to which the applicant  
11          was directly or indirectly introduced by the private personnel service.
- 12          (12)   A fee may be charged for resume writing provided the private personnel  
13          service does not require the applicant to become obligated for any other  
14          services."
- 15          Section 4. This act is effective when it becomes law.