HOUSE . . . . . No. 5973

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 23, 1972.

The committee on Commerce and Labor, to whom were referred the petition (accompanied by bill, Senate, No. 226) of Allan R. McKinnon for legislation to clarify the employment agency law; the petition (accompanied by bill, Senate, No. 243) of the Mass. Employment Assoc., by Burton Bartzoff, Director, for legislation to further regulate the licensing of employment agencies; the petition (accompanied by bill, House, No. 908) of the Mass. State Labor Council, AFL-CIO, and C. Vincent Shea relative to clarifying the employment agency law; the petition (accompanied by bill, House, No. 1287) of Thomas W. McGee and another for legislation to further regulate employment agencies; the petition (accompanied by bill, House, No. 1861) of Walter F. Matson for legislation to further regulate employment agency fees; and the petition (accompanied by bill, House, No. 3487) of M. Joseph Manning for legislation to clarify the employment agency law, report recommending that the accompanying bill (House, No. 5973) ought to pass.

For the committee,

NILS L. NORDBERG

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Two.

AN ACT FURTHER REGULATING EMPLOYMENT AGENCIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 46A of Chapter 140 of the General Laws as most recently amended by Section one of Chapter 412 of the Acts of 1968, is hereby further amended by striking out the definitions of "employment agency" and "applicant" as contained therein, and inserting the following definitions: –

"Employment agency", any person who conducts in whole or in part an agency for the purpose of procuring or attempting to procure permanent or temporary help or employment or engagements, or for the registration of persons seeking such help, employment or engagement, or for giving information as to where and of whom such help, employment or engagement may be procured, where a fee is exacted or attempted to be collected for such service. Such definition shall not apply to any person conducting a business which consists of employing individuals directly for the purpose of furnishing part time or temporary help to others.

"Applicant" – any applicant for employment.

SECTION 2. Section 46B of said Chapter 140, as most recently amended by Section 2 of said 412, is hereby further amended by striking out the last sentence.

SECTION 3. Section 46C of said Chapter 140, as inserted by Chapter 729 of the acts of nineteen hundred and sixty-six, is hereby amended by adding after the last sentence thereof the following: – "Each application shall be accompanied by an application fee of fifty dollars. Said fee shall cover cost of processing the original application. If a license is subsequently denied or the application withdrawn, this fee shall not be refundable.

SECTION 4. Section 46D of said Chapter 140, as most recently amended by Section 2 of Chapter 59 of the Acts of nineteen hundred and sixty-nine, is hereby amended in the fourth sentence thereof by inserting after the words "cause to be investigated the character" the words: – criminal record.

SECTION 5. Said section 46D is hereby further amended by adding at the end thereof the following new paragraph: –

"The commissioner may require all applicants for an employment agency license, upon original application, to submit to a written examination. Said examination shall be based upon the laws and regulations relating to the operations of a private employment agency, the laws relating to discrimination in employment and general laws and matters related to the management and operation of a private employment agency.

SECTION 6. Section 46F of said Chapter 140, as inserted by Chapter 729 of the acts of nineteen hundred and sixty-six, is hereby amended by striking out the first two sentences thereof and inserting the following new first two sentences: –

Each person licensed as required by Section forty-six B shall pay to the commissioner a license fee of sixty dollars if such employment agency has less than five placement employees and a fee of one hundred dollars if the agency has five or more such employees. Each licensee shall, before his license is issued or renewed, deposit with the commissioner a bond in a penal sum of five thousand dollars with two or more sureties or a duly authorized surety company to be approved by the commissioner.

SECTION 7. Section 46I of said Chapter 140, as inserted by Chapter 729 of the Acts of nineteen hundred and sixty-six, is hereby amended by striking out the first paragraph thereof and inserting the following new first paragraph: –

Each employment agency shall furnish in writing each applicant for employment: (1) information as to the name and address of the person for whom the applicant is to apply for such employment, the kind and character of the employment, the anticipated rate of wages or compensation, whether such employment is permanent or temporary, the name and address of the person authorizing the hiring of such applicant and the total

fee to be exacted by the employment agency from the applicant; provided that nothing in this paragraph shall be construed to prohibit a licensed employment agency from directing an applicant to employment by telephone, but such telephone message shall comply with the disclosure requirements of this paragraph and shall be within one day, confirmed in writing by the employment agency and sent to the applicant; a copy of such confirmation to be kept by the employment agency for a period of at least one year; (2) a true copy of every contract executed between it and such applicant, which shall have printed thereon or attached thereto a copy of Section forty-six L; and (3) a receipt for every charge made by the employment agency to the applicant and which the applicant has paid.

SECTION 8. Section 46J of said Chapter 140 as inserted by Chapter 729 of the Acts of 1966, is hereby amended by striking out in the second, third, fourth and fifth paragraphs, the words "but within the United States".

SECTION 9. Section 46K of said Chapter 140, as inserted by Chapter 729 of the Acts of 1966, is hereby amended by inserting at the end of subsection (9) the words: – and such disclosure is confirmed in writing, by striking out in subsection (10) after the word "fee" the words "from such employee"; and by adding at the end thereof the following new paragraph: –

Any employer who pays a fee to an employment agency or who obtains applicants from an employment agency under a contract which provides for payment of a fee by the employer shall not directly or indirectly deduct any part of such fee from the wages or salary of any employee placed by such agency.

SECTION 10. Said Section 46L is hereby further amended by striking out sub-section D and inserting the following: –

(D) The fees established under this section shall be based upon the wage or salary at which the applicant is hired.

(E) If an applicant accepts employment and fails to report initially for work, the total fee charged to such applicant shall not exceed twenty-five percent of the fee established, approved or otherwise fixed as chargeable by the employment agency; provided, however, if the applicant remains with his same employer, the fee shall not exceed fifty percent.

(F) In no case shall an employment agency receive any fees from employees which, when added to the employer's fees to the employment agency exceed the fees specified in this section. Each applicant shall be advised in writing by the agency of the total amount of any fee paid it by the employer for placing such applicant.

(G) The provisions of this section shall not apply to applicants who are hired at an annual wage of over twelve thousand dollars, nor shall they apply to any agency which is paid solely by employer clients.

(H) Any contract in violation of this section shall be void.

SECTION 11. Section 46-O of said Chapter 140, as most recently amended by Section 7 of Chapter 896 of the Acts of 1967, is hereby further amended by striking out paragraphs (d) and (f).

SECTION 12. The following new paragraph is added to Section 46R of Chapter 140 of the General Laws: –

Any officers of corporations and any managers of employment agencies shall also be individually liable for any violation, of which they had knowledge or can reasonably be shown should have in the proper performance of their duties had knowledge, of section forty-six B, E, F, J, K, L, M, N. O of Chapter 140 and shall be individually subject to the penalties provided in this section.

SECTION 13. Said Chapter 140 is hereby further amended by adding the following section: –

Section 46S. (A) There is hereby established an Employment Agency Advisory Board which shall consist of seven members to be appointed by the Governor. Three members shall be current licensees under the provisions of this act, and actively associated as a partner, manager or officer of a firm, association, or corporation which is licensed, and shall possess such training and experience as will qualify them to deal with problems of the private employment agency industry and the state regulations of the industry, of whom one shall also be affiliated with or employed by a member in good standing of the Massachusetts Employment Association and one shall also be affiliated with or

14 employed by a member in good standing of the Massachusetts
15 Professional Placement Consultants of their successors. One
16 member shall be a member of the Associated Industries of
17 Massachusetts, one member shall be a member of the Massa-
18 chusetts State Labor Council, AFL-CIO, and one member shall
19 be a representative of the public, subject to the provisions of
20 Section nine B of Chapter 13 of the General Laws. The seventh
21 member shall be the individual in the Commonwealth who is
22 directly responsible for the licensing of employment agencies or
23 his designee.

24 (B) Members shall be appointed for terms of three years and
25 shall serve until their successors are appointed and qualify,
26 except of those first appointed, two shall serve for one year, two
27 shall serve for two years, and two shall serve for three years.
28 Members may be reappointed for additional terms. The Governor
29 shall designate one member to be Chairman and any vacancy
30 shall be filled in the same manner in which the original
31 appointment was made for the unexpired portion of the term
32 only.

33 (C) Members of the Board shall serve without compensation
34 with the exception of the representative of the Commissioner
35 who shall be allowed to usual per diem, mileage or other
36 expenses as provided by law.

37 (D) It shall be the duty of the Board to advise and make
38 recommendations to the Commissioner with respect to all
39 matters relating to employment agencies in the State, including
40 but not limited to applicants for licenses, complaints against
41 agencies, licensing standards and/or requirements for licensing,
42 licensing examinations, maximum fees, standards of ethical
43 practice and discrimination in employment. In addition the
44 Board may conduct research on matters pertaining to the
45 operation and conduct of employment agencies and matters
46 related thereto in the State, publish findings and make recom-
47 mendations as the Board deems necessary to the Governor or
48 Commissioner.

49 (E) The Board shall meet at least once in each calendar
50 quarter of each year and unless a date therefor is designated by
51 the Chairman, the meeting shall be held on the first Wednesday
52 of the second month in each calendar quarter.

1 SECTION 14. Section 3 and Section 4 of this Act shall not
2 apply to persons who were registered under the provisions of the
3 last sentence of Section 46B of Chapter 140 prior to July 1,
4 1972, and who apply for a license as required by the first
5 sentence of said Section 46B prior to January 1, 1973.