

1 **State of Arkansas**  
2 **78th General Assembly**  
3 **Regular Session, 1991**

# A Bill

**HOUSE BILL**

4 **By: Representatives Thicksten, King, Blair, Brown, Brownlee, Dawson, Flanagin, Goodwin,**  
5 **Hawkins, Horn, Hunton, Jones, Landers, McCoy, McGee, McGinnis, McKissack, Mitchell,**  
6 **Mitchum, Rice, Sanson, Steele, Townsend, Tullis, Walker, Whorton, Willems, and J. Wilson**

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## For An Act To Be Entitled

10 "AN ACT TO AMEND ARKANSAS CODE 11-11-201 THROUGH 11-11-229  
11 TO PROVIDE FOR MANDATORY LICENSING OF EMPLOYMENT AGENCIES;  
12 TO REQUIRE FILING OF A BOND; TO REQUIRE COMPARABLE  
13 BENEFITS FOR TEMPORARY EMPLOYEES; AND FOR OTHER PURPOSES."

14

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

16

17 SECTION 1. Arkansas Code §11-11-202 is hereby amended to read as  
18 follows:

19 "11-11-202. Definitions. As used in this subchapter, unless the  
20 context otherwise requires:

21 (1) 'Agency manager' means the individual designated by the employment  
22 agency to conduct the general management, administration, and operation of a  
23 designated personnel service office. Every employment agency must maintain a  
24 licensed agency manager at each of its separate office locations;

25 (2) 'Applicant', except when used to describe an applicant for a  
26 license, means any person, whether employed or unemployed, seeking or entering  
27 into an arrangement for employment or change of employment through the medium  
28 or service of an employment agency;

29 (3) 'Comparable job' means a task, job or function that requires  
30 substantially similar skills, actions, or responsibilities;

31 (4) 'Contract labor' means the employee of a contract labor firm;

32 (5) 'Contract labor firm' means any person that furnishes its  
33 employees to perform services to other firms subject to their control and  
34 supervision;

35 (6) 'Department' means the Department of Labor for the State of

1 Arkansas;

2       (7) 'Director' means the Director of the Department of Labor for the  
3 State of Arkansas;

4       (8) 'Employee' means a person performing or seeking to perform work or  
5 service of any kind or character for compensation;

6       (9) 'Employee leasing agency' means any person which places employees  
7 of another business on its payroll and leases such employees back to the  
8 client on an on-going basis for a fee;

9       (10) 'Employee leasing services' means services provided by an  
10 employee leasing organization;

11       (11) 'Employer' means a person employing or seeking to employ a person  
12 for compensation;

13       (12) 'Placement agency' means any person who:

14               (A) places or attempts to place applicants or candidates seeking  
15 employment;

16               (B) recruits or attempts to recruit employees for employers  
17 seeking applicants;

18               (C) performs outplacement services; or

19               (D) purports to have access to job leads or compiles and  
20 provides lists or information about available jobs for the purpose of  
21 marketing job information to the public and providing access to that  
22 information, except as otherwise exempt by the provisions of this subchapter;

23       (13) 'Employment counselor' or 'counselor' means an employee of any  
24 employment agency who interviews, counsels, or advises applicants or employers  
25 or both on employment or allied problems, or who makes or arranges contracts  
26 or contacts between employers and employees. The term 'employment counselor'  
27 includes employees who solicit orders for employees from prospective  
28 employers;

29       (14) 'Fee' shall mean anything of value, including any money or other  
30 valuable consideration exacted, charged, collected, or received directly or  
31 indirectly, or paid or contracted to be paid for any services or act by a  
32 personnel service;

33       (15) 'Permanent employee' means a person whose employment position is  
34 of an indefinite duration and is not expected to be terminated upon the  
35 completion of a particular job or project;

1           (16) 'Person' means any individual, company, firm, association,  
2 partnership, or corporation;

3           (17) 'Employment agency' means a person who for a fee or other  
4 compensation:

5                   (A) operates as a placement agent or placement agency;

6                   (B) operates an employee leasing agency;

7                   (C) operates a contract labor firm; or

8                   (D) operates a temporary help services firm;

9           (18) 'Seniority' means the duration of employment with a particular  
10 employer;

11           (19) 'Temporary employee' means a person employed either through a  
12 temporary help services firm or directly by an employer, including a  
13 governmental employer, to perform certain tasks or functions with the  
14 expectation that the worker's position will be terminated upon the completion  
15 of the task or function or who is classified by the employer as a temporary  
16 employee;

17           (20) 'Temporary help services firm' means an organization that assigns  
18 its employees to perform services to others with the understanding that the  
19 temporary employee's services will be terminated at the completion of the  
20 assigned tasks or functions or time period."

21

22           SECTION 2. Arkansas Code §11-11-203(a) is hereby amended to read as  
23 follows:

24           "(a) The director shall have authority to impose a fine of not less  
25 than two hundred and fifty dollars (\$250) nor more than five thousand dollars  
26 (\$5,000) for violation of the provisions of this subchapter or any rules or  
27 regulations promulgated by the director pursuant to this subchapter by an  
28 employment agency or its agents."

29

30           SECTION 3. Arkansas Code §11-11-205 is hereby amended to read as  
31 follows:

32           "11-11-205. Exemptions. The provisions of this subchapter do not apply  
33 to:

34           (a) Any person who prepares resumes for individuals for employment  
35 purposes, if the person who prepares the resumes does not offer or provide the

1 services of an employment agency and does not have any financial connection  
2 with an employment agency;

3 (b) Any bona fide nursing school, nurses registry, management  
4 consulting firm, business school, or vocational school whose primary function  
5 and purpose is training and education, except that if such an organization  
6 charges a fee, directly or indirectly, for job placement of individuals, the  
7 organization shall be an employment agency within the meaning of this  
8 subchapter;

9 (c) A labor organization;

10 (d) Any person who publishes advertisements placed and paid for by a  
11 third person seeking employment or an employee, provided such person does not  
12 procure or offer to procure employment or employees; or

13 (e) Employment services established and operated by this state, any  
14 political subdivision of this state or the United States."

15

16 SECTION 4. Arkansas Code §11-11-206 is hereby amended to read as  
17 follows:

18 "11-11-206. (a) Each temporary employee who is employed at the same  
19 job site or for the same employer for more than six (6) months in any one (1)  
20 year period shall be entitled to all the rights and benefits, including but  
21 not limited to salary, overtime pay and insurance benefits, if any, that are  
22 offered to permanent employees at the same employment site who are performing  
23 a comparable job under comparable conditions. For the purposes of this  
24 subchapter, seniority may be considered in determining salary benefits but  
25 shall not be considered in determining whether a job or position is  
26 comparable.

27 (b) Any temporary employee who does not receive the same rights and  
28 benefits offered to permanent employees performing a comparable job under  
29 comparable conditions shall have the right to file suit in chancery or circuit  
30 court. Upon receiving a judgment in his favor, a temporary employee shall be  
31 entitled to treble damages plus reasonable attorney's fees."

32

33 SECTION 5. Arkansas Code §11-11-208 is hereby amended to read as  
34 follows:

35 "11-11-208. License required - Penalties.

1 (a) No person shall engage in the business of or act as any class of  
2 employment agency, agency manager, or counselor unless he first obtains a  
3 license from the department.

4 (b)(1) Any person who shall engage in the business of or act as an  
5 employment agency, agency manager, or counselor without first procuring a  
6 license shall be liable for a civil penalty for each such offense of not less  
7 than two hundred and fifty dollars (\$250) nor more than five thousand dollars  
8 (\$5,000). Each day such violation continues shall constitute a separate  
9 offense.

10 (2) In addition to the penalties described in subdivision (b)(1)  
11 of this section, upon petition of the director, any court in the state having  
12 the statutory power to enjoin or restrain shall have jurisdiction to restrain  
13 and enjoin any person who engages in the business of or acts as an employment  
14 agency, agency manager, or counselor without having first procured a license  
15 for so engaging or acting."

16

17 SECTION 6. Arkansas Code §11-11-213(a) is hereby amended to read as  
18 follows:

19 "(a) Every application for issuance or renewal of a license as a class  
20 of employment agency pursuant to the provisions of this subchapter shall be  
21 accompanied by a bond in the sum to be established by administrative  
22 regulation of the director. The director shall establish the sum of such bond  
23 based on the number of employees employed by the employment agency. In no  
24 event shall the bond be less than the sum of five thousand dollars (\$5,000)  
25 and in no event shall the bond exceed the sum of five hundred thousand dollars  
26 (\$500,000).

27 (1) The terms and conditions of the bond shall be approved by the  
28 director.

29 (2) The bond shall be conditioned that the licensee and each  
30 member, employee, shareholder, director, or officer of a person, firm,  
31 partnership, corporation, or association operating as agent of the licensee  
32 will not violate the provisions of this subchapter or violate rules,  
33 regulations, or orders lawfully promulgated by the director or violate the  
34 terms of any contract made by the licensee in the conduct of its business.

35 (3) The bond shall secure payment of wages for employees of the

1 employment agency."

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3 SECTION 7. Arkansas Code §11-11-216(a) is hereby amended to read as  
4 follows:

5 "(a)(1) Every applicant for a license under the provisions of this  
6 subchapter shall, before the director issues a license to him, be required to  
7 take and successfully complete a written examination, prepared by the  
8 director. The examination shall establish the competency of the applicant to  
9 operate and conduct the class of employment agency or to perform service as an  
10 agency manager or counselor.

11 (2) No examination shall be required for renewal of any license  
12 issued pursuant to this subchapter unless the license has been suspended,  
13 revoked, or submitted late, causing the application to be treated as a new  
14 application."

15

16 SECTION 8. Arkansas Code §11-11-217(a) is hereby amended to read as  
17 follows:

18 "(a) Before a permanent license shall be granted to a license  
19 applicant, an applicant shall pay the following annual fee for each license:

20 (1) One thousand dollars (\$1,000) for any class of employment  
21 agency;

22 (2) One hundred dollars (\$100) for an employment agency manager;

23 (3) One hundred dollars (\$100) for an employment counselor."  
24

25 SECTION 9. Arkansas Code §11-11-224(b) is hereby amended to read as  
26 follows:

27 "(b) All letterheads, receipts, and blanks shall contain the full name  
28 and address of the employment agency, and the licensee shall state in all  
29 notices and advertisements the fact that the licensee is, or conducts, an  
30 employment agency of the class specified by the license."  
31

32 SECTION 10. Arkansas Code §11-11-225 is hereby amended to read as  
33 follows:

34 "11-11-225. Miscellaneous restrictions and requirements. In addition  
35 to other provisions of this subchapter, the following provisions shall apply:

1           (1) Every licensee shall display his or its license in a conspicuous  
2 place in the main office of the employment agency. Managers and counselors  
3 shall display their licenses in a conspicuous place in their offices or work  
4 areas;

5           (2) All advertising by an employment agency of any form or kind shall  
6 include the words 'employment agency', 'personnel agency', 'employee leasing  
7 agency', 'contract labor firm', or 'temporary help firm'. Advertising for  
8 an employment position with the agency itself shall clearly convey the  
9 information that the job position offered is with the employment agency  
10 publishing the advertisement;

11           (3) No licensee or its agents or employees shall receive or require any  
12 applicant to execute any power of attorney, assignment of wages or salary, or  
13 note authorizing the confession of judgment;

14           (4) No licensee, by himself, or by his agents or employees shall  
15 solicit, persuade, or induce any employee to leave any employment in which the  
16 licensee or his agent has placed the employee, nor shall any licensee or any  
17 of its agents or employees solicit, persuade, or induce any employer to  
18 discharge any employee, nor shall any licensee, or his agents or employees,  
19 divide, or offer to divide or share directly or indirectly, any fee, charge,  
20 or compensation received, or to be received, from an employee with any  
21 employer or persons in any way connected with the business thereof;

22           (5) No licensee, by himself, or by his agents or employees shall give  
23 or promise to give anything of intrinsic value to any employer or applicant  
24 for employment as an inducement to use his services. No fee shall be  
25 solicited or accepted as an application or registration fee by an employment  
26 agency for the purpose of registering any person as an applicant for  
27 employment;

28           (6) No placement agency or its agents or employees shall advertise or  
29 make a referral for any job position without having first obtained a bona fide  
30 job order therefor;

31           (7) No placement agency or its agents or employees shall refer an  
32 applicant for a job or job interview unless the applicant has been personally  
33 interviewed by the placement agency, its agents, or employees or has  
34 corresponded with the placement agency with the specific purpose of securing  
35 employment through that placement agency;

1           (8) Every employment agency shall inform the public by a conspicuous  
2 sign or poster that the employment agency is subject to the requirements of  
3 this subchapter, which is administered and enforced by the Department of  
4 Labor. The department shall prepare and distribute the sign or poster to be  
5 used by an employment agency to comply with this subdivision;

6           (9) No licensee shall use any trade name or business identity similar  
7 to, or reasonably likely to be confused with, the trade name or business  
8 identity of an existing licensee or any governmental nonprofit employment  
9 agency;

10          (10) No licensee shall refer an applicant or employee to a situation,  
11 employment, or occupation prohibited by law;

12          (11) No placement agency shall charge a fee for any services other than  
13 actual placement of an applicant;

14          (12) No licensee shall charge an applicant a fee for accepting  
15 employment with the licensee or any subsidiary of the licensee;

16          (13) Any information regarding an applicant's background or credit,  
17 from whatever source obtained, shall be used for no purpose other than  
18 assisting the applicant in securing employment. However, the employment  
19 agency may use background and credit information regarding an applicant in  
20 determining whether to provide the applicant with its services or a job if the  
21 applicant gives written authorization for securing the information and  
22 understands the purpose for which the information is secured;

23          (14) No licensee or its agents or employees shall engage in any  
24 practice which discriminates against any person on the basis of race, color,  
25 sex, age, religion, or national origin;

26          (15) Under no circumstances shall more than one (1) fee for any one (1)  
27 placement be charged any applicant or employer by a placement agency;

28          (16) No contracts, forms, or schedules used by an employment agency  
29 shall contain any provisions in conflict with the provisions of this  
30 subchapter;

31          (17) All refunds due shall be made by a placement agency by cash,  
32 check, or money order promptly when due.

33          (18) Every employment agency shall provide to each employee a written  
34 statement of the employment benefits, including but not limited to overtime  
35 compensation, insurance benefits, and compensation for work-related injuries,

1 that are offered to its temporary and permanent employees. Receipt of such a  
2 statement of benefits shall be acknowledged by the signature of the employee."

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4 SECTION 11. Arkansas Code §11-11-227 is hereby amended to add the  
5 following new subsections:

6 "(g) It shall be unlawful for any placement agency to impose, enforce,  
7 collect or receive a fee from an applicant which exceeds fifteen percent (15%)  
8 of the applicant's gross wages for the applicant's first six (6) months of  
9 employment.

10 (h) It shall be unlawful for any employment agency to charge an  
11 applicant a fee for placing the applicant in a position which the applicant  
12 held as a temporary employee, leased employee, or on a contract labor basis."

13

14 SECTION 12. Arkansas Code §11-11-228(d) is hereby amended to read as  
15 follows:

16 "(d) It shall be unlawful for any placement agency to charge, demand,  
17 collect, or receive a greater compensation for any service performed by the  
18 agency than is specified in fee schedules filed with the department or than is  
19 specified by this subchapter."

20

21 SECTION 13. Arkansas Code §11-11-229 is hereby amended to add the  
22 following new subsection:

23 "(g) It shall be the duty of every employment agency to maintain for  
24 two (2) years a form signed by each of its employees acknowledging receipt of  
25 a written copy of employment benefits."

26

27 SECTION 14. (a) Applicants for a license as a temporary help services  
28 firm, contract labor firm, employee leasing agency or agency manager or  
29 counselor of a temporary help services firm, contract labor firm, or employee  
30 leasing agency shall be exempt from the examination requirement of §11-11-216,  
31 provided the applicant:

32 (1) Is otherwise qualified pursuant to the provisions of this  
33 subchapter;

34 (2) Has been operating as an employment agency of the class for which  
35 licensure is sought prior to January 1, 1991;

- 1       (3) Submits the appropriate fees; and
- 2       (4) Applies for a license prior to July 1, 1991.

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4       SECTION 15. All provisions of this act of a general and permanent  
5 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
6 Code Revision Commission shall incorporate the same in the Code.

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8       SECTION 16. If any provision of this act or the application thereof to  
9 any person or circumstance is held invalid, such invalidity shall not affect  
10 other provisions or applications of the act which can be given effect without  
11 the invalid provision or application, and to this end the provisions of this  
12 act are declared to be severable.

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14       SECTION 17. Arkansas Code §11-11-207 is hereby repealed.

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16       SECTION 18. All laws and parts of laws in conflict with this act are  
17 hereby repealed.

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