

LABOR AND EMPLOYMENT

CHAPTER 254

H. B. No. 596
(Lowe)

PROHIBITED EMPLOYMENTS OF MINORS

AN ACT

To amend and reenact subsection 1 of section 34-07-16 of the North Dakota Century Code, relating to prohibited employments and occupations of minors.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subsection 1 of section 34-07-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Any employment involving the use of any power driven machinery; but this prohibition shall not apply to the use of (a) office machines, such as adding machines or typewriters; (b) tagging, pricing, or similar machines used in retail stores; (c) domestic-type machines used in food service operations, such as toasters, coffee grinders, milk shake blenders; or (d) machines used in service stations such as those in connection with car cleaning, washing, or polishing, or in the dispensing of gasoline or oil, provided, however, that no work may be done in connection with cars and trucks if such work involves the use of pits, racks, or lifting apparatus, or involving the inflation of any tire mounted on a rim equipped with removable retaining ring.

Approved March 5, 1963.

CHAPTER 255

S. B. No. 302
(Sinner)

LICENSING EMPLOYMENT AGENTS AND AGENCIES

AN ACT

To provide for the regulation of employment agents and employment agencies and providing a penalty.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Definitions.)** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this Act, shall be given the meanings subjoined to them:

1. The term "employment agent" or "employment agency" means any person, firm, corporation, or association in this state engaged for hire or compensation in the business of furnishing persons seeking employment or changing employment, with information or other service enabling or tending to enable such persons to procure employment, by or with employers, other than such employment agent; or furnishing any other person, firm, corporation, or association who may be seeking to employ or may be in the market for help of any kind, with information enabling or tending to enable such other person, firm, corporation, or association to procure such help.
2. The term "employer" means any person, firm, corporation, or association employing or seeking to enter into an arrangement to employ any person through the medium or service of an employment agent.
3. The term "employee" means any person, whether employed or unemployed, seeking or entering into any arrangement for employment or change of employment through the medium of service of an employment agent.

§ 2. **Licenses Required.)** No person, firm, corporation, or association shall open or carry on an employment agency in the state, unless such person, firm, corporation, or association shall first procure a license from the attorney general. Any person, firm, corporation, or association who shall open or conduct any such agency without first procuring a license, shall be guilty of a misdemeanor and punished by a fine of not less than \$25.00, and not more than \$100.00, or by imprison-

ment for a period not to exceed 90 days, or both, at the discretion of the court.

§ 3. Written Application Filed.) On or before July first of each year every applicant for a license shall file with the attorney general a written application stating the name and address of the applicant, the kind of license desired, the street and number of the building in which the employment agency is to be maintained, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application shall also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license, and shall be signed by the applicant and sworn to before a notary public. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of the corporation, and shall be signed and sworn to by the president and treasurer thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. The application shall also state whether or not the applicant is, at the time of making application, or has at any previous time been, engaged or interested in, or employed by any one engaged in the business of conducting an employment agency, either in this state or any other, and if so, when and where. The application shall also give as reference the names and addresses of at least three persons of reputed business or professional integrity, located in the city or town where such applicant intends to conduct his business. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the attorney general a schedule of the fees or charges to be collected by such employment agent for any services rendered, together with all rules and regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such charges, with the attorney general. It shall be unlawful for any employment agent to charge, demand, collect, or receive a greater compensation for any service performed by him than is specified in such schedule filed with the attorney general.

It shall be the duty of the attorney general, and he shall have power, jurisdiction, and authority to issue licenses to employment agents, and to refuse to issue such license whenever, after due investigation, he finds that the character of the applicant makes him unfit to be an employment agent, or when

the premises for conducting the business of an employment agent are found upon investigation to be unfit for such use. Any such license granted by the attorney general may also be revoked by him upon due notice to the holder of said license, and upon due cause shown. Failure to comply with the duties, terms, conditions or provisions of this Act, or any lawful orders of the attorney general shall be deemed due cause to revoke such license.

§ 4. License—Fees.) All such licenses shall endure for a period of one year only, and annual fees therefor shall be paid as follows: Every employment agent engaged in placing female persons only in employment shall pay a license fee of \$75.00. Every employment agent engaged in placing male persons only in employment shall pay a license fee of \$100.00. Every employment agent placing both male and female persons shall pay a license fee of \$150.00. All license fees prescribed in this Act shall be paid to the chief clerk under the direction and supervision of the attorney general and by him shall be paid promptly to the state treasurer, who shall deposit all such moneys in the general fund of this state.

§ 5. Applicants to Furnish Bonds.) Every application for a license shall be accompanied by a bond in the penal sum of \$2,000.00, with one or more sureties or a duly authorized surety company, to be approved by the attorney general and filed in his office, conditioned that the agent will conform to and not violate any of the terms or requirements of this Act or violate the covenants of any contract made by such agent in the conduct of said business. Action on this bond may be brought by and prosecuted in the name of any person damaged by any breach or any condition thereof, and successive actions may be maintained thereon.

§ 6. Form and Contents of License.) After an application for a license has been granted, a license shall be issued to the applicant which shall state the name of the employment agent, and, if a corporation, the names of the officers, if a partnership, the names of the partners, the location of the office where the business is to be conducted, and the name of the person who is to be charged with the general management of the business. The license shall also be numbered and dated and state whether it is a class one, class two, or class three license, as provided in section 11.

§ 7. Duration of License.) Every license, unless previously revoked, shall remain in force until one year after its issue, and every employment agent shall, upon payment of the amount of the license fee required and the filing of a new bond, have issued to it a license for the ensuing year, unless

the attorney general shall refuse to do so for any of the reasons stated in this Act.

§ 8. Suspension or Revocation of License.) If the attorney general shall find that the employment agent has violated any of the provisions of this Act, or has acted dishonestly in connection with his business, or has improperly conducted his business, or that any other good and sufficient reason exists within the meaning and purpose of this Act, the attorney general may suspend or revoke his license, or refuse to grant a new license to the employment agent upon the termination thereof; but in any case no such action shall be taken until a written notice has been sent to the employment agent specifying the charges against him and he has been given a hearing, if he requests, and a reasonable opportunity to disprove or explain the charges.

§ 9. Transfer of License—Consent to Others Becoming Connected with Licensee.) No license granted under the terms of this Act shall be transferable, except with the consent of the attorney general. No employment agent shall permit any person not mentioned in the license to become connected with the business as a partner or as an active officer of a licensed corporation unless the consent of the attorney general shall first be obtained. Such consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question had been mentioned therein. If such consent is given, the names of the persons so becoming connected with the employment agency shall be endorsed upon the license and, if such license is renewed, shall be substituted for or added to the names of the persons originally mentioned therein.

§ 10. Places of Business.) No employment agent shall open, conduct, or maintain an employment agency at any other place than that specified in the license without first obtaining the consent of the attorney general. Such consent may be withheld for any reason for which an original application might have been rejected, if such place had been mentioned therein. If such consent is given, it shall be endorsed upon the license and, if such license is renewed, such other place shall be substituted for the place originally named in the license. So long as any employment agent shall continue to act as such under his license he shall maintain and keep open an office or place of business at the place specified in the license.

§ 11. Licenses Classified.) Licenses granted under the provisions of this Act shall be designated as class one, class two, or class three.

A class one license shall entitle the holder thereof to engage in a business of serving those seeking employment and those seeking employees as woodsmen, agricultural hands, coachmen, grooms, hostlers, seamstresses, cooks, waiters, waitresses, scrubwomen, laundresses, maids, and all domestics and servants, unskilled workers and general laborers.

A class two license shall entitle the holder thereof to engage in the business of serving those seeking employment and those seeking employees in technical (engineering or otherwise), educational, clerical, executive, hospital, medical, dental, and like pursuits not provided for under either a class one or a class three license.

A class three license shall entitle the holder thereof to engage in the business of serving those seeking employment and those seeking employees in circus, vaudeville, theatrical, or other entertainments, exhibitions, or performances, or allied pursuits.

Nothing in this Act shall be construed to prohibit an employment agent holding a class one license from serving those included under a class two license, provided the business is conducted in accordance with the rules and regulations applicable to a class one license; and under no circumstances shall a licensee be allowed to conduct a theatrical agency under any but a class three license.

Any question of classification arising under the provisions of this Act shall be determined by the attorney general.

§ 12. Licenses Posted—Schedule of Charges Posted and Printed on Receipts—Sections of Law Posted.) Every employment agent licensed under a class one license shall post in a conspicuous place in every room used for business purposes in the employment office conducted by him, and shall have printed on the back of every receipt given, a schedule showing the amount of the service charges to be made to either employees, employers, or both. In no case shall the amount collected exceed the schedule of charges so indicated.

Every employment agent licensed under a class one license shall post in a conspicuous place in every room used for business purposes in the employment office conducted by him, a copy of sections 12 and 15 hereof, to be furnished the employment agent by the attorney general.

No employment agent holding a class one license shall direct any applicant to apply for employment at any place outside of the office of such employment agent without first giving to such applicant, in written form, the name and address of the employment agent, the name of the applicant, the name

and address of the person to whom the applicant is referred, and the kind of employment supposed to be obtainable at such place. Nothing herein shall be construed to prohibit an employment agent from directing an applicant by telephone to apply for employment, but such telephone message must be confirmed in writing by the employment agent within 24 hours after the telephone conversation, and a carbon copy of such confirmation shall be kept on file at the place of business of the employment agent for a period of one year.

§ 13. Contracts with Applicants for Employment.) Every employment agent licensed under a class two license shall contract, in writing, with every applicant for employment for services to be rendered to the applicant by the employment agent, which contract shall contain the date, the name and address of the employment agency, the name of the employment agent, the service charge to be made to the applicant, and the time and method of payments, and, on either the face or back of the contract, shall appear the definition of "accept", "method of payment", "temporary position" and "charge for permanent position which proves to be temporary".

§ 14. Theatrical Agencies—Duplicates of Applications for Engagements.) Every employment agent conducting a theatrical agency who shall procure for or offer to an applicant a theatrical engagement shall have executed, in duplicate, a contract containing the name and address of the applicant, the name and address of the employer, and of the employment agent acting for such employer; the time and duration of such engagement; the amount to be paid to such applicant; character of entertainment to be given or services to be rendered, and the name of the person by whom the transportation is to be paid. One of such duplicate contracts shall be delivered to the person engaging the applicant and the other shall be delivered to the applicant. The employment agency procuring the engagement for such applicant shall keep on file, or enter in a book provided for that purpose, a copy of such contract.

§ 15. Rules Governing Agencies.) In addition to the foregoing rules governing specific classifications, the following rules shall govern each and every employment agent.

(1) Every license, of whatever classification, shall be hung in a conspicuous place in the main office of the employment agency.

(2) No fee shall be solicited or accepted as an application of registration fee by any employment agent for the purpose of being registered as an applicant for employment.

(3) Every employment agent shall give to every person from whom the payment of a service charge is received for

services rendered or to be rendered, or assistance given or to be given, a receipt bearing the name and address of the employment agency, the name of the employment agent, the amount of the payment, the date of the payment and for what it is paid. Every receipt to an applicant by an employment agent shall be numbered and bound in duplicate form. Duplicate copy of each receipt shall be kept at least one year.

(4) Every employment agent shall keep a record of all services rendered employers and employees. This record shall contain the name and address of the employer by whom the services were solicited, the name and address of the employee, kind of position offered by the employer, kind of position accepted by the employee, probable duration of the employment, rate of wage or salary to be paid the employee, amount of the employment agent's service charge, dates and amounts of payments, date and amount of refund, if any, and for what, and a space for remarks under which shall be recorded anything of an individual nature to amplify the foregoing report and as information in the event of any question arising concerning the transaction. Such records shall during business hours be open to the inspection of the attorney general at the address where the employment agency is conducted for the purpose of satisfying the attorney general that they are being kept in conformity with this rule. Upon written complaint being made, the attorney general may require of the employment agent against whom the complaint is made a detailed account under oath in writing of the transaction referred to in the complaint. In the event the attorney general has reason to question the detailed report so submitted by the employment agent, the attorney general shall have authority to demand of the employment agent the production of these records for examination by him, or his agent, at such place as the attorney general may designate.

(5) No employment agent shall send out any applicant for employment without having obtained, either orally or in writing, a bona fide order, and if no employment of the kind applied for existed at the place to which the applicant was directed, the employment agent shall refund to the applicant, within 48 hours of demand, any sums paid by the applicant for transportation in going to and returning from the place, and all fees paid by the applicant. Nothing in this Act shall be construed to prevent an employment agent from directing an applicant to an employer where the employer has previously requested that he be accorded interviews with applicants of certain types and qualifications, even though no actual vacancy existed in the employer's organization at the time the applicant was so directed; nor shall it prevent the employment agent from attempting to sell the services of an applicant to

the employer even though no order has been placed with the employment agent; provided, that in any case the applicant is acquainted with the facts when directed to the employer, in which event no employment agent shall be liable to any applicant as provided in this rule.

(6) No employment agent shall, by himself, or by his agent or agents, solicit, persuade, or induce any employee to leave any employment in which the employment agent or his agents has placed the employee. Nor shall any agent, by himself or through any of his agents, persuade or induce or solicit any employer to discharge any employee.

(7) No employment agent shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for help or for obtaining work or employment.

(8) Any employment agent who knowingly procures, entices, aids, or abets in procuring, enticing, or sending a woman or girl to practice prostitution or to enter as an inmate or a servant a house of ill fame, or other place resorted to for prostitution, the character of which, upon reasonable inquiry, could have been ascertained by the employment agent, shall be deemed guilty of a misdemeanor and punishable by a fine of not less than \$100.00, and not more than \$1,000.00, or by imprisonment for a period not to exceed one year, or both, at the discretion of the court.

(9) No employment agent shall place or assist in placing any person in unlawful employment.

(10) No employment agent shall fail to state in any advertisement, proposal, or contract for employment, that there is a strike or lockout at the place of proposed employment, if he has knowledge that such condition exists.

(11) Any person, firm, or corporation who shall split, divide, or share, directly or indirectly, any fee, charge, or compensation received from any employee with any employer, or person in any way connected with the business thereof, shall be guilty of a misdemeanor and punished by a fine of not less than \$100.00, and not more than \$1,000.00, or by imprisonment for a period not to exceed one year, or both at the discretion of the court.

Approved March 18, 1963.