

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1991

CHAPTER 970
HOUSE BILL 519

AN ACT REQUIRING EMPLOYERS TO REIMBURSE EMPLOYMENT AGENCY
FEES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-47.3 reads as rewritten:

"§ 95-47.3. Fees and contracts; filing with Commissioner.

(a) Every license applicant shall file with the Commissioner a schedule of fees or charges made by the private personnel service to applicants for employment for any services rendered, stating clearly the conditions under which the private personnel service refunds or does not refund a fee, together with all rules or regulations that may in any manner affect the fees charged or to be charged for any service. Every license applicant and licensee shall include in its schedule of fees or charges a clear description of how it determines fees for placement of employment, the compensation of which is based, in whole or in part, on commission. Changes in the schedule may be made, but no change shall become effective until seven calendar days after the filing thereof with the Commissioner. It is unlawful for a private personnel service to charge, demand, collect or receive a greater compensation from an applicant for employment for any service performed than as specified in the schedule filed with the Commissioner.

(b) Every license applicant shall file with the Commissioner a copy of the contract which the private personnel service will require applicants for employment to execute."

Sec. 2. G.S. 95-47.4 is amended by adding the following new subsection to read:

"(h) If a private personnel service places an applicant in a position of employment, the compensation of which is based, in whole or in part, on commission, the private personnel service shall have a written job order from the employer that includes the anticipated earnings upon which the private personnel service may base its fee. The private personnel service shall explain to the applicant and the employer how the fee for the placement is calculated, and shall inform in writing both the applicant and the employer of the provisions of G.S. 95-47.3A governing fee refunds from employers."

Sec. 3. Chapter 95 of the General Statutes is amended by adding the following new section to read:

"§ 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."

Sec. 4. This act becomes effective January 1, 1993, and applies to job placements made on or after that date.

In the General Assembly read three times and ratified this the 16th day of July, 1992.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives