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DIVISION 3. OBLIGATIONS [1427 - 3273.69] (*Heading of Division 3 amended by Stats. 1988, Ch. 160, Sec. 14.*)

PART 4. OBLIGATIONS ARISING FROM PARTICULAR TRANSACTIONS [1738 - 3273.69] (*Part 4 enacted 1872.*)

TITLE 2.91. EMPLOYMENT AGENCY, EMPLOYMENT COUNSELING, AND JOB LISTING SERVICES ACT [1812.500 - 1812.544] (*Title 2.91 added by Stats. 1989, Ch. 704, Sec. 2.*)

CHAPTER 4. Job Listing Services [1812.515 - 1812.521] (*Chapter 4 added by Stats. 1989, Ch. 704, Sec. 2.*)

1812.515. (a) Every job listing service subject to this title shall maintain a bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be ten thousand dollars (\$10,000) for each location. A copy of the bond shall be filed with the Secretary of State.

(b) The bond required by this section shall be in favor of, and payable to, the people of the State of California, and shall be conditioned that the person obtaining the bond will comply with this title and will pay all sums due any individual or group of individuals when the person or his or her representative, agent, or employee has received those sums. The bond shall be for the benefit of any person or persons damaged by any violation of misrepresentation, deceit, unlawful acts of omissions, or failure to provide the services of the job listing service in performance of the contract with the jobseeker, by the job listing service or its agent, representatives, or employees while acting within the scope of their employment.

(c) (1) No job listing service shall conduct any business without having a current surety bond in the amount prescribed by this chapter and filing a copy of the bond with the Secretary of State, identifying the bond and the date of cancellation or termination.

(2) Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send a written notice of that cancellation or termination to both the job listing service and the Secretary of State, identifying the bond and the date of cancellation or termination.

(3) If any job listing service fails to obtain a new bond and file a copy of that bond with the Secretary of State by the effective date of the cancellation or termination of the former bond, the job listing service shall cease to conduct any business unless and until a new surety bond is obtained and a copy of that bond is filed with the Secretary of State.

(d) When a deposit has been made in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure, the person asserting a claim against the deposit shall, in lieu of Section 996.430 of the Code of Civil Procedure, establish the claim by furnishing evidence to the Secretary of State of a money judgment entered by a court together with evidence that the claimant is a person described in subdivision (b).

(e) When a person has established the claim with the Secretary of State, the Secretary of State shall review and approve the claim and enter the date of approval on the claim. The claim shall be designated an "approved claim."

(f) When the first claim against a particular deposit has been approved, it shall not be paid until the expiration of a period of 240 days after the date of its approval by the Secretary of State. Subsequent claims that are approved by the Secretary of State within the same 240-day period shall similarly not be paid until the expiration of the 240-day period. Upon the expiration of the 240-day period, the Secretary of State shall pay all approved claims from that 240-day period in full unless the deposit is insufficient, in which case each approved claim shall be paid in a pro rata share of the deposit.

(g) When the Secretary of State approves the first claim against a particular deposit after the expiration of the 240-day period, the date of approval of that claim shall begin a new 240-day period to which subdivision (f) shall apply with respect to the amount remaining in the deposit.

(h) After a deposit is exhausted, no further claims shall be paid by the Secretary of State. Claimants who have had their claims paid in full or in part pursuant to subdivisions (f) and (g) shall not be required to return funds received from the deposit for the benefit of other claimants.

(i) When a deposit has been made in lieu of a bond, the amount of the deposit shall not be subject to attachment, garnishment, or execution with respect to an action or judgment against the job listing service, other than as to an amount as no longer needed or required for the purpose of this title that would otherwise be returned to the job listing service by the Secretary of State.

(j) The Secretary of State shall retain a cash deposit for two years from the date the Secretary of State receives written notification from the assignor of the deposit that the assignor has ceased to engage in the business of a job listing service or has filed a bond pursuant to subdivision (a), provided that there are no outstanding claims against the deposit. Written notification to the Secretary of State shall include all of the following: (1) name, address, and telephone number of the assignor; (2) name, address, and telephone number of the bank at which the deposit is located; (3) account number of the deposit; and (4) a statement whether the assignor is ceasing to engage in the business of a job listing service or has filed a bond with the Secretary of State. The Secretary of State shall forward an acknowledgment of receipt of the written notice to the assignor at the address indicated therein, specifying the date of receipt of the written notice and anticipated date of release of the deposit, provided there are no outstanding claims against the deposit.

(k) A judge of a superior court may order the return of the deposit prior to the expiration of two years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit or order the Secretary of State to retain the deposit for a specified period beyond the two years pursuant to subdivision (j) to resolve outstanding claims against the deposit account.

(l) The Secretary of State shall charge a filing fee not to exceed the cost of filing the bond or deposit filed in lieu of a bond pursuant to Section 995.710 of the Code of Civil Procedure.

(m) The Secretary of State shall enforce the provisions of this chapter that govern the filing and maintenance of bonds and deposits in lieu of bonds.

(Amended by Stats. 2002, Ch. 784, Sec. 17. Effective January 1, 2003.)

1812.516. (a) Every job listing service shall give a written contract to every jobseeker from whom a fee or deposit is to be received, whether directly or indirectly. The original and one copy of the contract shall be given to the jobseeker at the time the jobseeker signs the contract and before the job listing service accepts any fee or deposit or the jobseeker becomes obligated to pay any such fee or deposit. The contract shall contain all of the following:

(1) The name of the job listing service and the addresses and telephone numbers of the principal office of the job listing service and the location providing the listing services to the jobseeker.

(2) The amount of the fee to be charged and to be collected from the jobseeker.

(3) A description of the service to be performed by the job listing service, including significant conditions, restrictions, and limitations where applicable.

(4) A description of the jobseeker's specifications for the employment opportunity in clear language understandable to the jobseeker, including, but not limited to, the following:

(A) Kind of work or employment.

(B) Interests of jobseeker.

(C) Qualifications of jobseeker.

(D) Daily hours of work, the wages or salary, benefits, and other conditions of employment.

(E) Location of job.

(5) The contract expiration date, which shall not be later than 90 days from the date of execution of the contract.

(6) The following statement, in immediate proximity to the space reserved for the jobseeker's signature, in type no smaller than 10-point boldfaced type:

YOUR RIGHT TO CANCEL

/enter date of transaction/

"You may cancel this contract for job listing services without any penalty or obligation, if notice of cancellation is given, in writing, within three business days from the above date.

"To cancel this contract, just mail or deliver a signed and dated copy of the following cancellation notice or any other written notice of cancellation, to (name of job listing service) at (address of its place of business), NOT LATER THAN MIDNIGHT OF /date/."

CANCELLATION NOTICE

I hereby cancel this contract.

Dated:

Customer's Signature"

Until the job listing service has complied with this section the jobseeker may cancel the job listing service's contract.

(7) The following statement, with the caption in type no smaller than 10-point boldfaced type and the remainder in a size no smaller than that generally used throughout the contract, and in full capitals, boldface, or italics:

"RIGHT TO REFUND"

"If, within seven business days after payment of a fee or deposit, the job listing service has not supplied you with at least three available employment opportunities meeting the specifications of the contract as to type of job; interests of jobseeker; qualifications of jobseeker; hours, salary, benefits, and other conditions of employment; location of job; and any other specifications expressly set forth in the contract, the full amount of the fee or deposit paid shall be refunded to you upon your request.

"If you do not obtain a job through the services of the job listing service, or if you obtain employment which lasts less than 90 days, any amount paid in fees or deposits in excess of a twenty-five dollar (\$25) service charge shall be refunded to you, upon your request after expiration of the contract.

"Any refund due must be made to you within 10 days of your request. If the refund is not made in that time, the job listing service must pay to you an additional sum equal to the amount of your fee or deposit."

(8) If any labor trouble exists at the place of employment, that fact shall be stated in the listing of that employment provided to the jobseeker.

(b) All contracts shall be dated and shall be made and numbered consecutively in triplicate, the original and each copy to be signed by the jobseeker and the person acting for the job listing service. The original and one copy shall be given to the jobseeker and the other copy shall be kept on file at the job listing service.

(c) The full agreement between the parties shall be contained in a single document containing those elements set forth in this section.

(Amended by Stats. 1990, Ch. 1256, Sec. 6.)

1812.517. (a) (1) A job listing service shall provide a copy of the service's fee schedule and payment terms to any jobseeker from whom a fee or deposit is to be received, prior to the jobseeker being interviewed by a counselor or other agent or employee.

(2) In the schedule, the maximum fee shall be fixed and shall include the charges of every kind rendered by the job listing service in each case or transaction on behalf of the prospective employee. Changes in the fee schedule may be made, but no change shall become effective until posted for not less than seven days in a conspicuous place in the job listing service.

(3) A copy of the schedule in effect shall be kept posted in the job listing service in a conspicuous place, and the posted schedule and the changes therein shall be in lettering or printing of not less than standard pica capitals. The date of the taking effect of the schedule and of each change therein shall appear on the posted copies.

(4) A copy of all fee schedules, and of all changes therein, shall be kept on file at the job listing service, retrospectively, for a period of one year.

(b) No fee charged or collected shall be in excess of the fee as scheduled.

(c) No job listing service may take from a jobseeker a confession of judgment, a promissory note or notes, or an assignment of wages to cover its fees.

(d) The fee charged shall not be based on a portion or percentage of the salary or wages earned or to be earned in the employment obtained through use of the job listing service.

(e) (1) No job listing service shall divide fees with an employer, an agent, or other employee of any employer or person to whom help is furnished.

(2) No job listing service shall charge any jobseeker a fee for accepting employment with that job listing service or any subsidiary of that service.

(3) No job listing service shall charge any jobseeker a fee when help is furnished to an employer, an agent, any employee of any employer, a member, or person who has a financial interest in the job listing service.

(Added by Stats. 1989, Ch. 704, Sec. 2.)

1812.518. (a) (1) A job listing service shall refund in full any advance fee paid and cancel any other obligation incurred by the jobseeker if the job listing service does not, within seven business days after execution of the contract, supply at least three employment opportunities then available to the jobseeker and meeting the specifications of the contract.

(2) A job listing service will be deemed to have supplied information meeting the specifications of the jobseeker if the information supplied meets the contract specifications with reference to: type of job; interests of jobseeker; qualifications of jobseeker; hours, salary, benefits, and other conditions of employment; location of job; and any other specifications expressly set forth in the contract.

(b) A job listing service shall refund any amount over and above a twenty-five dollar (\$25) service charge and cancel any other obligation incurred by the jobseeker if the jobseeker does not obtain a job, or if employment, once obtained, lasts less than 90 days.

(c) A job listing service shall make all refunds required under this section within 10 days after the jobseeker requests such refund. Unless the refund is made within that time, the job listing service shall pay the jobseeker an additional sum equal to the amount of the deposit.

(Added by Stats. 1989, Ch. 704, Sec. 2.)

1812.519. (a) No job listing service shall accept a fee from any jobseeker, or send any jobseeker for employment, without having obtained, in writing, a bona fide job order for employment.

(b) A job listing service shall identify itself as a job listing service to the employer in all instances in which it contacts an employer for the purposes of soliciting a job order. All job orders shall be recorded in writing. A job order for employment shall be considered to have been given by an employer to a job listing service under the following conditions:

(1) The employer, or his or her agent, in writing, registers a request or gives permission that the job listing service recruit or refer jobseekers who meet the employer's stated job specifications and the employer furnishes such information as required by subdivision (a) of Section 1812.516.

(2) A job order is valid for the referral of any qualified jobseeker until it is filled or canceled by the employer, and may serve as the basis for job listing service advertising. The job listing service is required to recontact the employer within the four-day period immediately preceding dissemination of the job listing information to ensure that the position is still vacant prior to any additional advertising or referral of jobseekers.

(c) No job listing service shall refer a jobseeker to a job knowing or having reason to know that:

(1) The job does not exist or the jobseeker is not qualified for the job.

(2) The job has been described or advertised by or on behalf of the job listing service in a false, misleading, or deceptive manner.

(3) The job listing service has not obtained written permission to list the job from the employer or an authorized agent of the employer.

(d) No job listing service shall exchange job orders with an employment agency which charges a placement fee.

(Amended by Stats. 1991, Ch. 654, Sec. 51.)

1812.520. (a) No job listing service shall make or cause to be made any false, misleading or deceptive advertisements or representations concerning the services that the job listing service will provide to jobseekers.

(b) (1) No job listing service shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisements.

(2) All advertisements of a job listing service shall contain the correct name of the job listing service and one of the following:

(A) The street address of the job listing service's place of business.

(B) The correct telephone number of the job listing service at its place of business.

(3) No job listing service shall give any false information or make any false promises or representations concerning an engagement or employment to any jobseeker.

(4) No job listing service shall, by its choice of name or by advertisement or representation, represent itself to be an employment agency or to perform the services of an employment agency.

(c) Special requirements not usually associated with a job shall be specified in any advertisement. When the location of the position advertised is more than 50 miles from the job listing service office responsible for the advertisement, it shall state either the location or that the job is "nonlocal." Special benefits of the job, if advertised, shall be specifically described and substitute terms or symbols such as "extras" or "+" shall not be sufficient.

(d) An advertised salary shall be based upon the starting salary contained in the job order. An advertised range of starting salaries shall be specified by preceding the minimum salary and maximum salary by terms "from" and "to" respectively. When the job order contains only the maximum amount of a salary range, that advertised salary shall be preceded by the word "to." If a maximum salary is dependent upon the jobseeker's experience, the advertised salary may be described by listing the minimum salary and the term "up Depending on Experience" or "up D.O.E." The words "open" and "negotiable" or words or symbols of like import shall not be used as a substitute for the salary. If an advertised salary is based in whole or in part on commissions, that fact shall be indicated in the advertisement.

(e) All job listing services shall maintain a record of all advertised jobs, correlated to show the date and the publication in which the advertisement appeared and the job order number of each job advertised, retrospectively for a period of one year.

(Amended by Stats. 1990, Ch. 1256, Sec. 7.)

1812.521. (a) No job listing service shall, when employment would be in violation of Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code or Part 27 (commencing with Section 48000) of the Education Code, accept any application for employment made by, or on behalf of, any minor, or place or assist in placing any minor in that employment.

(b) Every job listing service shall notify each jobseeker before sending the jobseeker in response to a request for employment whether a labor contract is in existence at the establishment to which the jobseeker is being sent, and whether union membership is required.

(c) No job listing service shall send a jobseeker to any place where a strike, lockout, or other labor trouble exists without notifying the jobseeker of that fact and shall in addition thereto enter a statement of those conditions upon the contract or receipt given to the jobseeker.

(Amended by Stats. 1990, Ch. 1256, Sec. 8.)