House Legislative Analysis Section

Washington Square Building, Suite 1025
Lansing, Michigan 48909
Phone: 517/373-6466

REVISE EMPLOYMENT AGENCY REGULATION

House Bill 4719 as introduced
House Bill 4721 with committee amendments
First Analysis (5-15-89)

Sponsor: Rep. Joseph Young, Jr.
Committee: State Affairs

THE APPARENT PROBLEM:

The adequacy and appropriateness of state regulation of employment agencies has been a matter of concern at least since the enactment of the Occupational Code of 1980. The code provides for a confusing system of five classes of agencies with varying degrees of regulation. Among those regulated are agencies whose fees are paid by employers, rather than would-be employees. These agencies, with the concurrence of consumer representatives and state regulators, argue that state regulation is for them unnecessary and wasteful; the consumer is not at risk with employer-paid "head-hunters." In contrast, anecdotes abound of agencies that offer "consulting" and mislead job-hunters into thinking that the agency will find a job for the applicant. In some cases, a consumer pays a substantial fee for a list of jobs which in fact were advertised in newspaper classifieds. The Department of Licensing and Regulation has for years been working with industry and consumer representatives to develop a revision of the code's provisions relating to employment agencies, one which will simplify regulation, eliminate unnecessary regulation, and increase regulation where necessary.

THE CONTENT OF THE BILLS:

House Bill 4721 would amend the Occupational Code to revise regulation of employment agencies. The current system of five classes of agency licenses would be replaced with two types of agency licenses. A Type A personnel agency would be one which put a client in direct contact with employers and received a fee from the client. A Type B agency would be one which offered consultation in return for a fee from the client. Exempted from regulation would be employer-paid services, theatrical agencies, insurer-paid rehabilitation services, and employment services provided by a person under contract with the State of Michigan. A person holding a valid license at the time the bill took effect would be considered to be appropriately licensed under the bill until that license expired. The bill could not take effect unless House Bill 4719 also were enacted. A more detailed explanation follows.

Licensing. The size of the surety bond required of agencies would be increased from $5,000 to $10,000, and the bond would be filed with the Department of Licensing and Regulation, rather than the secretary of state. As it may do now, the department could require a new bond if the surety became irresponsible; however, the agency would have 30 days, rather than the current 10, to file a new bond before its license was automatically suspended. "Good moral character" would have to be demonstrated by the owner, if a sole proprietorship; by officers and all shareholders owning at least ten percent of the stock, if a corporation; and by each partner, if a partnership.

Names. A person could not have both a Type A license and a Type B license under the same name. Names would have to be approved by the department. The department could disapprove of a name similar to the that of the Michigan Employment Security Commission, one likely to be confused with a free placement bureau or an existing agency, or one likely to be misleading to the public.

Conduct of business. A Type A agency and a Type B agency could not share quarters with each other, nor with related businesses such as resume-writing services. An agency would have to maintain on the premises a manager who was a licensed employment agent (for Type A agencies) or consulting agent (for Type B agencies). Neither an employment agent nor a consulting agent could operate independently of the appropriate licensed agency. As with current law, agencies and agents would be prohibited from giving or receiving gifts with the intent to influence the action of an employer or to benefit the agency or agent. A personnel agency could not urge an employer to discharge an employee. Records generally would have to be kept three years, rather than the current one year. An agency would be jointly and severally liable for the actions of its employees.

Special Type B restrictions. A Type B agency could not put a client into direct contact with a specific employer, contact a specific employer on behalf of a client, or charge a fee to a client at the time a client procures employment. Unless the agency met a number of special requirements, a Type B agency could not provide clients with lists of potential employers. An inaccurate job listing or job order would entitle a client to a full refund. A Type B agency could not advertise or in any way lead a client to believe that the agency or its employees could put a client in direct contact with an employer.

Fees. Restrictions on fees would be much as they are now. Neither a personnel agency nor an agent could accept or request a registration fee. No fees other than those specified in the contract could be required for services performed under the contract. A Type A agency could not accept a fee until the client had made a bona fide acceptance of employment. A personnel agency could share a fee only with another licensed personnel agency (however, sharing with an unlicensed agency would be allowed if that agency was in another state where licensure was not required).

Contracts. Different requirements would be enacted for Type A and Type B contracts. While both types would have to contain information on state regulation and fees, Type B contracts would in addition have to include information on services, a refund provision for services not rendered pursuant to the terms of the contract, and a statement disclosing that the agency was not permitted to schedule interviews or put the client into direct contact with potential employers. A Type A agency could not enter into a contract with a client if another agency or business were a party to the contract.

OVER

MCL 339.1001 et al.

House Bill 4719 would amend the State License Fee Act to increase the application processing fee for personnel agencies from $100 to $225, and for employment or consulting agents from $15 to $30. The bill could not take effect unless House Bill 4721 were enacted.

MCL 338.2227

FISCAL IMPLICATIONS:

The Department of Licensing and Regulation expects costs ultimately to be reduced under House Bill 4721. (5-15-89)

ARGUMENTS:

For:

The bills would enact a more sensible framework for regulation of employment agencies. Regulation would focus on activities where consumer problems persist; employer-paid services, which represent the vast majority of employment agencies, would be deregulated. Regulation would be increased for services paid by the would-be employee, with special attention being given to those areas where problems have been the worst: the job-listing and consulting services, which House Bill 4721 would call Type B agencies. Such services would be subject to additional disclosures and restrictions. Regulation of both types of agencies would be improved by increasing recordkeeping and bonding requirements, and by stronger regulation of agents, among other things. Fees would be increased for the relatively few agencies that would continue to be regulated; increases would reflect not only recent inflation but also the costs of more stringent regulation.

Against:

If, as appears to be the case, consumers are consistently swindled by job-listing or consulting types of services, the state would do better to ban those enterprises, rather than give consumers the false sense of security that state regulation can promote. Unhappy clients of such agencies report that the existing lack of guarantees is often "explained away;" an unscrupulous agency could use the same tactic successfully with the proposed disclosure requirements.

Response: It would be inappropriate for the state to attempt to ban a type of enterprise where not all who are involved are necessarily unscrupulous. The better approach is to ban the unwanted activities, provide for detailed disclosures, and establish stringent oversight and regulation.

POSITIONS:

The Department of Licensing and Regulation supports the bills. (5-15-89)

The Employment Agency Board supports the bills. (5-15-89)

The Michigan Consumers Council supports the bills. (5-12-89)

The Michigan Association of Personnel Consultants voted to support similar legislation last summer, but does not have a formal position on any subsequent changes. (5-12-89)