

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE
Revised

House Bill 866
Economic Matters

(Delegate Beidle)

Finance

Employment Agencies - Bonding - Enforcement Authority

This bill authorizes the Commissioner of Labor and Industry to initiate an investigation or investigate a complaint that an employment agency has failed to submit a penal bond and establishes civil penalties for noncompliance.

Fiscal Summary

State Effect: Since it is assumed that the bill would apply in a limited number of cases, State finances would not be materially affected.

Local Effect: None.

Small Business Effect: Potential meaningful for noncompliant employment agencies.

Analysis

Bill Summary: In investigating an employment agency that has failed to submit a penal bond, the Commissioner of Labor and Industry may require an employment agency to submit the required bond or provide information showing that the employment agency is not required to comply with bonding requirements.

If the employment agency complies with these requirements, the commissioner may terminate proceedings or schedule a hearing. The commissioner is authorized to impose a civil penalty of between \$500 and \$1,000 for each violation identified during the hearing. The commissioner is also authorized to impose a civil penalty of between \$500 and \$1,000 for each failure to comply with an order or failure to submit a timely response.

Current Law: An employment agency is a person that obtains an employee for another person, obtains employment for a client, or provides information that enables a client to gain employment. These services extend to those agencies that obtain employment in connection with an exhibition or performance and those agencies that help an individual to obtain an alien labor certification or immigrant visa. The definition of employment agency does not include a business that directly employs individuals to provide part-time or temporary services, including nursing referral service agencies.

An employment agency has to submit a penal bond of \$7,000 to the Commissioner of Labor and Industry, conditioned on compliance with the Maryland Employment Agency Act and payment for any damages caused by the agency's deceit, fraud, misrepresentation, or misstatement.

An employment agency may not refer a client to a job that operates unlawfully or where a labor dispute exists. Among other requirements and prohibitions, all jobs and orders must be properly documented and the agency is prohibited from charging advance fees or otherwise sharing fees with employers. An employment agency is authorized to charge a placement fee, as established by contract.

A person who violates the Maryland Employment Agency Act is guilty of a misdemeanor and is subject to penalties of up to \$1,000 and/or one year imprisonment.

Background: Employment agencies were established to identify vacant jobs and refer workers to interviews. In exchange for employment, the worker would pay a fee as a percentage of his or her wages. These arrangements have decreased in popularity with the widespread accessibility of hiring announcements and job placement search engines.

A 2002 sunset review of the Division of Labor and Industry found that the division licensed 86 employment agencies. Nearly half of these agencies were home-based health care agencies, with most of remaining licensees serving the entertainment industry as booking agencies for bands, actors, or models. The report recommended repealing the division's regulation of all employment agencies, while maintaining other requirements and prohibitions.

Chapter 316 of 2003 implemented many of the report's recommendations, including the repeal of the Commissioner of Labor and Industry's authority to regulate employment agencies. Provisions requiring a penal bond and prohibiting advance fees were maintained. Under current law, the commissioner does not have authority to enforce these provisions; any action must be pursued through the legal system.

The Maryland Employment Agency Act no longer applies to nursing referral service agencies; Chapter 132 of 2004 established regulation of these agencies by the Department of Health and Mental Hygiene. The Act also does not apply to temporary employment

agencies, such as Manpower or Kelly Temporary Services, as these agencies directly hire and pay wages to their clients. Because of this employer-employee relationship, the employee is protected under State and federal labor laws. Executive search firms are similarly exempted, as these agencies contract directly with an employer and do not charge advance fees to the job seeker.

State Revenues: The bill authorizes the Commissioner of Labor and Industry to impose civil penalties of between \$500 and \$1,000 for noncompliance. These penalties are addition to fines and imprisonment terms already established in State law. Although these penalties could increase general fund revenues, any such increase is assumed to be minimal.

State Expenditures: The bill authorizes the commissioner to investigate an employment agency that has failed to submit a penal bond. Given the relatively small number of employment agencies and the relatively limited scope of the bill, it is assumed that these requirements could be handled with existing resources. If additional personnel are necessary, the department may request positions through the budget process.

Small Business Effect: Although employment agencies are currently subject to bonding and other requirements, noncompliant agencies may incur additional expenditures if enforcement by the Division of Labor and Industry is reinstated.

Additional Information

Prior Introductions: None.

Cross File: SB 650 (Senator DeGrange) – Finance.

Information Source(s): Office of Administrative Hearings; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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