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CHAPTER 25.

 PRIVATE PERSONNEL PLACEMENT SERVICES

**SECTION 41‑25‑10.** Short title.

 This chapter may be cited as the "South Carolina Private Personnel Placement Services Act".

HISTORY: 1962 Code Section 40‑441; 1968 (55) 2846; 1981 Act No. 107 Section 1; 1985 Act No. 149, Section 1.

**SECTION 41‑25‑20.** Definitions.

 For the purposes of this chapter:

 (a) "Secretary" means the Secretary of State or his designated representative.

 (b) "Private Personnel Placement Service" includes any person who charges fees, whether direct or indirect, all or any part of which may be in consideration of the person providing information on employment opportunities, procuring or attempting to procure employment for applicants seeking employment, and for procuring or attempting to procure employees for employers seeking applicants, regardless of what the services are called, which must include, but not be restricted to, job listing services, employment information centers, executive search firms, outplacement services, career counseling services, consultants, or resume services that perform job market sourcing for applicants, corporate or private business services, and other professional consultants and all who market or advertise personnel services on a "third party" basis, unless covered under other provisions of law.

 (c) "Private Personnel Placement Service" does not include:

 (1) Any placement office conducted by an incorporated bar association, hospital, association of registered professional nurses, registered medical institution, or by an incorporated association or society of professional engineers, or by an incorporated association or society of land surveyors, or by an incorporated association or society of registered architects;

 (2) Any organization operated by or under the exclusive control of a bona fide nonprofit educational, religious, charitable, or eleemosynary institution;

 (3) Temporary help services;

 (4) Any organization operated by a governmental authority.

 (d) "Placement fee" means any thing of value, paid, or directed to be paid, including retainer fees for providing information on employment opportunities, for the service of procuring or attempting to procure employment for persons seeking employment, or for procuring or attempting to procure employees for employers seeking applicants, or charges by persons performing services as defined in item (b) of this section.

 (e) "Person" means any individual, company, society, association, corporation, manager, contractor, subcontractor, partnership, bureau, agency, service, office, or the agent or employee of the foregoing.

 (f) "Applicant" means anyone performing or seeking to perform work, service, or labor of any kind and who had for this purpose visited or been in contact with a Private Personnel Placement Service.

 (g) "Employer" means any person who engages or who seeks to engage applicants for employment.

HISTORY: 1962 Code Section 40‑431; 1968 (55) 2846; 1981 Act No. 107 Section 1; 1985 Act No. 149, Section 1; 1989 Act No. 147, Section 1, eff June 8, 1989.

**SECTION 41‑25‑30.** License required; application for license; fee; bond; claims against licensee; service of summons; place of operation of agency; no license to issue where previous application denied or license revoked.

 (A) No person or firm may engage in the private personnel placement service business in South Carolina unless the person or firm has a current license for the business as provided in this chapter.

 (B) An application for license must be made to the Secretary for each location. If the agency is owned by:

 (1) an individual, the application must be made by him;

 (2) a partnership, the application must be made by all of the partners;

 (3) a corporation, an association, or a society, the application must be made by the president, vice‑president, secretary, and treasurer and by a person owning twenty percent or more of the stock.

 (C) Each application must be written and in a form prescribed by the Secretary and must contain:

 (1) the name and address of the applicant;

 (2) the name under which the agency is to be conducted;

 (3) the street and number of the building or place where the business is to be conducted;

 (4) the business or occupations engaged in by the applicant previously;

 (5) whether the applicant has previously held or applied, whether granted or denied, for a private personnel placement service license within the United States or its possessions or territories;

 (6) the name and address of the individual who actually will direct and operate the placement activities;

 (7) the name and present address of the last employer of the individual;

 (8) a verification from a newspaper of the greatest circulation in the county of the applicant's location that a public notification containing the information required in the application has been included in the newspaper on at least one occasion before the filing;

 (9) a certification by a licensed member of the South Carolina Bar that all requirements of the laws of South Carolina have been met.

 (D) The application must be accompanied by an application fee of two hundred dollars and a license fee of one hundred dollars and verification of a surety bond of three thousand dollars or other security equal to twenty‑five thousand dollars in a form approved by the Attorney General and deposited with the Secretary. The Secretary shall issue a license after thirty days following receipt of the application unless there is a reason for the Secretary to believe on the basis of a complaint and investigation that the applicant is not in compliance with this chapter. The application for a license must be denied and the license fee refunded if the Secretary determines that the applicant is not in compliance. The application fee must not be refunded.

 (E) The aggregate liability of the surety for all breaches of the bond may not exceed the sum of the bond. The surety on the bond may cancel the bond upon giving thirty days written notice to the Secretary and the Private Personnel Placement Service and is relieved of liability for a breach of condition occurring after the effective date of the cancellation. Failure to maintain a surety bond in force or have other security filed with the Secretary of twenty‑five thousand dollars constitutes disqualification for retaining a license. The Secretary shall allow ten working days after notification to the licensee for requalification before revoking that license. The business may not operate until proof of surety bond, or other security of twenty‑five thousand dollars, has been established with the Secretary.

 (F) Licenses are issued for two years beginning January first through December thirty‑first twenty‑four months later unless turned in or revoked by the Secretary. Licenses must be renewed biennially.

 (G) The Secretary shall mail annual license renewal forms to the last known address of each licensee by November first. If license renewal forms are not received by a licensee for any cause, the licensee shall request a license renewal form from the Secretary's office. Every licensee shall file a biennial license renewal in a form and manner suitable to the Secretary postmarked not later than the last day of December. The renewal form must be accompanied by a renewal fee of one hundred dollars. If license renewal forms are not received by the Secretary's office the first week of January, the Secretary shall notify the licensee in writing that the licensee shall pay a one hundred dollar late penalty and that the licensee has thirty days from the date of notice to comply with licensing requirements. If compliance is not met within the specified time, the Secretary shall deny license renewal, return the license fee, and notify that business to cease operation and make public notification of closure of the service in the newspaper of the greatest circulation in the county in which it is located.

 (H) If a written complaint by a person to the Secretary reveals that a licensee or firm is not in compliance with Section 41‑25‑30, the Secretary shall notify the licensee or firm of the alleged violation in writing and allow thirty days from the date of notice for response to and compliance with this chapter. If no response is received within thirty days, the Secretary shall investigate the alleged violation, and if the licensee or firm is found to be in violation of this chapter, deny or revoke that license.

 (I) All claims or suits brought against a licensee may be brought in the name of the person damaged upon the bond deposited with the Secretary and may be transferred and assigned as other claims for damages in civil suits. The amount of damages claimed by the plaintiff, and not the penalty designated in the bond, determines the jurisdiction of the court in which the action is brought. If a licensee has departed from the State with intent to defraud his creditors or to avoid the service of a summons in an action brought under this section, service must be made upon the surety. A copy of the summons must be mailed to the last known post office address of the residence of the licensee as shown by the records of the Secretary. The service is deemed to be made when not less than the number of days has intervened between the date of service and the return of the same as provided by law.

 (J) No license may be granted to conduct a private personnel placement service in a residence or rooms used for living purposes, where boarders or lodgers are kept, where meals are served, where persons sleep, or, in connection with a building or premises, where intoxicating liquors are sold to be consumed on premises, except cafes and restaurants in office buildings.

 However, if the licensee has maintained a South Carolina State Placement Service license for three consecutive years, or has attained the national CPC designation, including two years of service, the licensee may by licensed to operate from a private residence if desired but must be in accordance with other applicable federal, state, and local laws and zoning ordinances. In addition, a person who is handicapped or incapacitated for a period of time could be allowed a waiver for that period of time to work from a private residence.

 (K) No license may be issued if the applicant has had a previous application which was denied or a license which has been revoked within the United States or its possessions or territories. No person may own, wholly or in part, nor manage a private personnel placement service who previously has been denied or had revoked his license to operate a private personnel placement service within the United States or its possessions or territories. The Secretary, depending upon the seriousness of the offense causing the denial or revocation of the license, after a suitable period of three months to one year, may allow the person, upon full compliance, to reapply for a license.

 (L) If a licensee relocates its offices before filing the annual renewal notice, he shall submit a written notice of the change of address to the Secretary containing a notarized statement that the new location conforms to licensing requirements.

 (M) If a licensee ceases to operate or goes out of business, he shall notify the Secretary in writing of the action and return the license to the Secretary.

 (N) If a business is sold to a new owner, the previous owner shall notify the Secretary in writing of the action and return the license to the Secretary and state to whom the business is being sold. That business may not operate until the new owner has obtained a new license.

 (O) Private Personnel Placement Services licenses are nontransferable absolutely and unconditionally.

HISTORY: 1962 Code Section 40‑432; 1968 (55) 2846; 1981 Act No. 107 Section 1; 1985 Act No. 149, Section 1; 1989 Act No. 147, Section 2, eff June 8, 1989; 1992 Act No. 477, Section 1, eff June 17, 1992; 1992 Act No. 501, Part II Section 9F, eff July 1, 1992.

**SECTION 41‑25‑35.** Registration periods for biennial licenses; proration of fees during conversion to biennial cycle; renewals.

 (A) Licenses required by this chapter to be registered biennially must be assigned registration periods as provided in this section.

 (1) Upon the first reregistration of the licenses by the South Carolina Secretary of State's Office after the effective date of biennial licensure, a biennial registration period must be implemented as follows:

 (a) Licenses whose license numbers end in:

 (i) an even number and expire between July 1, 1992, and December 31, 1992, shall obtain a biennial registration;

 (ii) an even number and expire between January 1, 1993, and June 30, 1993, shall reregister their licenses for one year. At the end of that time they shall reregister their license for two years and biennially;

 (iii) an odd number and expire between July 1, 1992, and December 31, 1992, shall register their licenses for one year. At the end of that time they shall register their license for two years and biennially;

 (iv) an odd number and expire between January 1, 1993, and June 30, 1993, shall obtain a biennial registration;

 (v) "A" through "L" and expire between July 1, 1992, and June 30, 1993, shall obtain a biennial registration;

 (vi) "M" through "Z" and expire between July 1, 1992, and June 30, 1993, shall obtain a one‑year registration and obtain a biennial registration after that time;

 (b) Licenses issued in South Carolina for the first time between:

 (i) July 1, 1992, and December 31, 1992, which end in an even number must be issued biennially;

 (ii) July 1, 1992, and December 31, 1992, which end in an odd number must be issued for one year. At the end of that time the license must be renewed for two years and biennially after that time;

 (iii) January 1, 1993, and June 30, 1993, which end in an even number must be issued for one year. At the end of that time the license must be renewed for two years and biennially after that time;

 (iv) January 1, 1993, and June 30, 1993, which end in an odd number must be issued biennially;

 (v) July 1, 1992, and June 30, 1993, and issued license numbers which end in 'A' through 'L' must be issued biennially;

 (vi) July 1, 1992, and June 30, 1993, and which end in "M" through "Z" must be issued for one year and renewed biennially after that time.

 (2) Registrations are valid until the last day of the month in which the registration expires. The license fees charged during the conversion process must be prorated for the length of the license issued.

 (B) After June 30, 1993, all licensees must be registered and licensed for twenty‑four consecutive months, and the registrations expire on the last day of the twenty‑fourth month. The registration and licensing of every licensee must be renewed biennially upon application by the holder and by payment of fees required by law to take effect on the first day of the month following the expiration of the registration and licensing to be renewed. This section does not prevent the Secretary of State's Office from refusing to issue a license.

HISTORY: 1992 Act No. 501, Part II Section 9A, eff July 1, 1992.

**SECTION 41‑25‑40.** Duties of licensees.

 Every licensed private personnel placement service in the State shall:

 (a) Openly and in a place accessible to applicants and employees alike, display the license.

 (b) Make available to each applicant a copy of every contract between the private personnel placement service and the applicant which shall have printed on it or attached to it a copy of the fee and placement fee schedules.

 (c) Guarantee, to the applicant through contractual agreement between the private personnel placement service and the applicant who pays a placement fee, every job placement for a minimum period of ninety calendar days. Should the position end in less than ninety calendar days, regardless of the cause for termination, the fee or service charge for services rendered must be adjusted to and shall not exceed the amount of the original fee prorated over ninety calendar days from the beginning date of employment. Should the applicant not report for work, regardless of the reason, there may be no fee charged to the applicant.

HISTORY: 1962 Code Section 40‑433; 1968 (55) 2846; 1981 Act No. 107 Section 1; 1985 Act No. 149, Section 1.

**SECTION 41‑25‑50.** Prohibited activities or conduct of personnel agencies.

 Any person who acts as a private personnel placement service in the State, or his employees may not:

 (a) Knowingly induce or attempt to induce any employee it has placed to leave that employment unless it is requested to do so by the employee and he has first contacted the private personnel placement service.

 (b) Knowingly publish or cause to be published any false, fraudulent, or misleading information, representation, promise, notice, or advertisement.

 (c) Knowingly refer any employee or applicant for employment to a place where a strike or lockout exists without furnishing the employee or applicant with a written statement as to the existence of the strike or lockout, if the agency had knowledge of the facts.

 (d) Knowingly send or cause to be sent any applicant to any place the private personnel placement service knows or reasonably should have known is maintained for immoral or illicit purposes.

 (e) Impose a fee for the registration of an applicant.

 (f) Impose a fee to an applicant for placement services or job referral or employment consulting services except when the services rendered result in that applicant accepting employment and establishes a confirmed starting date.

 (g) Engage or attempt to engage in splitting or sharing, with an employer, an agent or other employee of an employer, or other person to whom private personnel placement service has been furnished, a payment received by a private personnel placement service from a person seeking employment or from an employer.

 (h) Procure or attempt to procure the discharge of a person from his current employment.

 (i) Advertise in any media, including a newspaper, trade publication, billboard, radio, television, card, printed notice, circular, contract, letterhead, or any other material made for public distribution, except an envelope, without stating the firm name and if the firm name does not include words identifying it as providing private personnel placement service then additional words must be used such as Personnel Agency, Personnel Consultant, Fee Paid, or other wording that establishes the identity as a Private Personnel Placement Service in the advertisement.

 (j) Deleted.

 (k) Use or cause to be used any fictitious name as a contact person for an applicant or employer or a name which is not the correct name of the private personnel placement service itself or the individual employee within the service who is handling the job order.

HISTORY: 1962 Code Section 40‑434; 1968 (55) 2846; 1978 Act No. 553; 1981 Act No. 107 Section 1; 1985 Act No. 149, Section 1; 1992 Act No. 477, Section 2, eff June 17, 1992.

**SECTION 41‑25‑60.** Advertisements in South Carolina of firms located outside its jurisdiction.

 Any person who acts as a private personnel placement service doing business in South Carolina but is located outside the jurisdiction of the other provisions of this chapter may not be allowed to advertise by any media, including a newspaper, trade publication, billboard, radio, television, card, printed notice, circular, contract, letterhead, or any other material made for public distribution, except an envelope, without clearly stating that the advertisement is by a firm providing private personnel placement services, stating the firm name, address, and using the words personnel placement service, personnel agency, consultants, fee paid, or other wording that establishes the identity as a private personnel placement service in the advertisement, if the firm name does not include such words.

HISTORY: 1962 Code Section 40‑435; 1968 (55) 2846; 1981 Act No. 107 Section 1; 1985 Act No. 149, Section 1.

**SECTION 41‑25‑70.** Prohibited activities or conduct of employers or person seeking employment.

 Any person or employer seeking employees or a person seeking employment shall not:

 (a) Make any false statement or conceal any material fact for the purpose of obtaining employees, or employment, by or through a private personnel placement service.

 (b) Engage or attempt to engage in the splitting or sharing of fees or payments for services of a private personnel placement service with any person to whom this chapter is applicable.

 (c) Intentionally or knowingly refuse to pay any fee due to a private personnel placement service for placement services rendered.

HISTORY: 1962 Code Section 40‑436; 1968 (55) 2846; 1981 Act No. 107 Section 1; 1985 Act No. 149, Section 1.

**SECTION 41‑25‑80.** Confidentiality of records and files.

 Private personnel placement service information is confidential and must be considered and protected as follows:

 All records and files of the private personnel placement service of all applicants, all customers, all job orders, which include their names, addresses, telephone numbers, and all related data for each, is confidential and belongs to the firm regardless of the medium on which it is recorded. The improper use or removal from the firm of all or any part of this data by a current or former employee is prohibited without written authority from the owner of the private personnel placement service and its use by a former employee is prohibited for a period of one hundred eighty days from the date of that person's separation from the firm.

HISTORY: 1962 Code Section 40‑437; 1968 (55) 2846; 1981 Act No. 107 Section 1; 1985 Act No. 149, Section 1.

**SECTION 41‑25‑90.** Penalties.

 Any person who knowingly violates Sections 41‑25‑30, 41‑25‑40, 41‑25‑50, 41‑25‑60, 41‑25‑70, or 41‑25‑80 is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or be imprisoned for not more than one year, or both. In addition, anyone convicted of the violations must be denied his right to operate as a private personnel placement service and shall immediately surrender his license to the Secretary.

 Failure to surrender the license shall subject the licensee to a misdemeanor with the same penalty as above prescribed in this section with each day of noncompliance constituting a separate offense.

HISTORY: 1962 Code Section 40‑438; 1968 (55) 2846; 1981 Act No. 107 Section 1; 1985 Act No. 149, Section 1.

**SECTION 41‑25‑100.** Liability for violations; remedies.

 (a) A person who knowingly violates Sections 41‑25‑50, 41‑25‑60, 41‑25‑70, and 41‑25‑80 is liable to the person adversely affected by the violation for three times the amount of actual damages incurred plus court costs and reasonable attorneys' fees.

 (b) In an action filed under this section, a plaintiff may seek and the court, in its discretion, may grant:

 (1) An order enjoining the defendant in the suit from violating Sections 41‑25‑50, 41‑25‑60, 41‑25‑70, and 41‑25‑80;

 (2) Any order necessary to restore to the person any property acquired by the defendant in the suit in violation of Sections 41‑25‑50, 41‑25‑60, 41‑25‑70, and 41‑25‑80; or

 (3) Other relief that the court considers proper, including, if the court's judgment against the defendant in the suit is not satisfied within three months after the date of the final judgment, the appointment of a receiver, the revocation of a license or certificate authorizing the defendant in the suit to engage in business in this State, or an order enjoining the defendant in the suit from acting as a personnel service.

HISTORY: 1985 Act No. 149, Section 1.

 The provisions of this chapter may be enforced by any state agency having jurisdiction and authority to enforce this chapter, including, but not limited to:

 (a) Secretary of State

 (b) Division of Labor

 (c) Attorney General

 (d) Department of Consumer Affairs

 (e) South Carolina Law Enforcement Division

 (f) Circuit solicitors

 (g) Local law enforcement agencies

 (h) Any person who has been damaged by or has knowledge of any violation of the provisions of this chapter.

HISTORY: 1985 Act No. 149, Section 1; 1993 Act No. 181, Section 977, eff February 1, 1994.