

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

John W. Scibak

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the regulation of employment agencies.

PETITION OF:

NAME:

John W. Scibak

DISTRICT/ADDRESS:

2nd Hampshire

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE REGULATION OF EMPLOYMENT AGENCIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 46A of Chapter 140, as appearing in the 2006 Official Edition, is hereby
2 amended by striking the entire section and inserting in place thereof the following:

3 As used in this section and in sections forty six B to forty six R, inclusive, the following words shall have
4 the following meanings:

5 "Commissioner", the commissioner of the Division of Occupational Safety who has been
6 authorized by the Director of Labor to enforce M.G.L. c. 140, §§46A-46R and regulations promulgated
7 thereunder.

8 "Employment agency", any person who conducts in whole or in part an agency for the purpose of
9 procuring or attempting to procure permanent or temporary help or employment or engagements, or for
10 the registration of persons seeking such help, employment or engagement, or for giving information as to
11 where and of whom such help, employment or engagement may be procured, where a fee is exacted or
12 attempted to be collected for such service.

13 "Fee" (a) Any money or other valuable consideration paid or promised to be paid either by an
14 applicant for employment or by an employer of an applicant for services rendered or to be rendered by
15 any person conducting an employment agency under this chapter.

16 (b) the difference between the amount of money received by any person who furnishes employees
17 and the amount paid by him to such employee.

18 "Recruiting domestic employment agency", any agency which, for a fee, procures or attempts to
19 procure, from outside the commonwealth but within the United States one or more employees to do
20 domestic or household work in the commonwealth.

21 "Emigrant agent", any person who, on behalf of an employment agency and for a fee, procures or
22 attempts to procure domestic or household employment in the commonwealth for persons outside the
23 commonwealth seeking such employment, or, domestic or household employees from outside the
24 commonwealth for employers in the commonwealth seeking the services of such employees.

25 "Placement employee", any placement manager, placement director, counsellor, interviewer, or
26 any other person employed by an employment agency who spends a substantial part of his time
27 interviewing, counseling or conferring with job applicants.

28 "Person", any individual, company, society, association, corporation, manager, contractor,
29 subcontractor, or their agents or employees but shall not include any labor organization, as defined in
30 section two of chapter one hundred and fifty A; nor any agency operated by a religious, charitable,
31 nonprofit organization or accredited educational institution no part of the earnings of which inures to the
32 benefit of any private shareholder or individual; nor any agency operated by the federal, state or
33 municipal governments; nor any person validly licensed pursuant to section one hundred and eighty C;
34 provided, however, the provisions of sections forty six L through forty six O, inclusive, shall apply to
35 such person.

36 "Applicant", any applicant for employment residing within the United States. It shall be
37 immaterial for coverage under this section whether the applicant is paid by the employment agency or by
38 his employer.

39 SECTION 2. Section 46B of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
40 by striking the entire section and inserting in place thereof the following:

41 Section 46B. Notwithstanding the other provisions of this chapter no person shall open, keep,
42 maintain, carry on, or advertise any employment agency unless he has been issued a license therefor
43 under section forty six D from the commissioner; provided, however, that a license validly issued
44 pursuant to section one hundred and eighty C shall suffice for the purposes of this section. Such license
45 shall be posted in a conspicuous place in each employment agency conducted by such person. Licensing
46 of theatrical booking agents, personal agents and managers shall be governed by sections one hundred and
47 eighty A to one hundred and eighty G, inclusive.

48 SECTION 3. Section 46C of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
49 by striking the entire section and inserting in place thereof the following:

50 Section 46C. Any person desiring to obtain a license to establish, conduct or keep an employment
51 agency shall make application for such license to the commissioner. Such application shall be made by
52 the owner or owners of the employment agency, and if the employment agency is owned by a
53 corporation, such application shall be made by the president and treasurer thereof. Each application shall
54 be in writing and in a form prescribed by the commissioner, and shall contain the name and address of the
55 applicant; the name under which the employment agency is to be conducted; the street and number of the
56 building or place where the business is to be conducted; the former business or occupations of the
57 applicant; the name and address of the individual who will actually direct and operate the placement
58 activities of the agency, whether such individual be the applicant or another; the length of time such
59 individual has spent as a placement employee; a description of the duties of such individual as a
60 placement employee. Such application shall be accompanied by samples or accurate facsimiles of each
61 and every form which the applicant for a license will require applicants for employment to execute, and
62 such forms shall be approved by the commissioner before a license may be issued. The commissioner
63 shall not approve any such form unless it fairly, clearly and fully represents the contractual terms and
64 conditions between the proposed employment agency and an applicant for employment. Each application
65 for a license shall be accompanied by the affidavits of two reputable residents of the commonwealth that
66 the applicant is a person of good moral character.

67 SECTION 4. Section 46D of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
68 by striking the entire section and inserting in place thereof the following:

69 Section 46D. Upon the receipt of an application for such license, the commissioner shall cause
70 the name and address of the applicant, the name under which the employment agency is to be conducted,
71 and the street and number of the place where it is to be conducted, to be posted in a conspicuous place in
72 his office. The commissioner shall investigate or cause to be investigated the character and responsibility
73 of the applicant and shall examine or cause to be examined the place in which the applicant proposes to
74 conduct such agency. Within one week after such application is so posted, published and notice thereof
75 sent, any person may file a written protest against the issuance of such license, which protest shall be
76 signed by the person filing the same or his authorized agent or attorney, and shall state the reasons why
77 the said license should not be issued. The commissioner shall appoint a time and place for a hearing of
78 such application and shall give at least five days notice thereof to the applicant and to any person filing
79 such protest. The commissioner may administer oaths, subpoena witnesses and take testimony in respect
80 to the matters contained in such application and protest and may receive evidence in the form of affidavits
81 pertaining to such matters. If after such investigation, examination or hearing the commissioner finds the
82 applicant is not a person of good character or responsibility; that he or the individual who will actually
83 direct and operate the placement activities of the employment agency has not had at least two years'
84 experience as a placement employee, or as a person engaged in personnel management, or in related

85 activities which similarly tend to establish the competence of such individual to operate the placement
86 activities of the agency; that the individual who will actually direct and operate the agency does not have
87 a knowledge and understanding of the provisions contained in sections forty six A to forty six R,
88 inclusive; or that the place where the employment agency is to be conducted is not suitable therefor; or
89 that the applicant has not complied with the provisions of section forty six C, the said application shall be
90 denied and a license shall not be granted. Each application shall be granted or denied within forty days
91 from the date of its filing. Any license issued hereunder by the commissioner shall be in full force and
92 effect until one year following the date thereof, unless sooner revoked or suspended. Each license shall be
93 renewed upon payment of the annual license fee and posting of the penal bond. No license shall be issued
94 by the commissioner if the place in which the business of the employment agency is to be conducted is a
95 room used for living purposes or where boarders or lodgers are kept or where meals are served or where
96 persons sleep or in connection with a building or premises where intoxicating liquors are sold to be
97 consumed on the premises, excepting cafes and restaurants in office buildings.

98 SECTION 5. Section 46E of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
99 by striking the entire section and inserting in place thereof the following:

100 Section 46E. A license issued under section forty six D shall not be assigned or transferred
101 without the prior written approval of the commissioner. Application for such approval shall be made in
102 the same manner as an application for a license, as provided in sections forty six C and forty six D. The
103 location of an employment agency shall not be changed without the prior written consent of the
104 commissioner and such change of location shall be endorsed upon the license. More than one such license
105 may be issued to the same person. If an applicant desires to establish or keep an employment agency at
106 more than one location, he must apply for a license for each location at which he intends to conduct said
107 employment agency, as provided in section forty six C.

108 SECTION 6. Section 46F of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
109 by striking the entire section and inserting in place thereof the following:

110 Section 46F. Each person licensed under section forty six D to carry on the business of an
111 employment agency shall before such license issues pay to the commissioner a license fee, the amount of
112 which shall be determined annually by the commissioner of administration under the provision of section
113 three B of chapter seven for the filing thereof. Each licensee shall, before his license is issued or renewed,
114 deposit with the commissioner a bond in a penal sum of three thousand dollars with two or more sureties
115 or a duly authorized surety company, to be approved by the commissioner. The bond shall be payable to
116 the people of the commonwealth and shall be on condition that the licensee will comply with the
117 provisions of sections forty six B to forty six R, inclusive, and shall pay all damages occasioned to any
118 person by reason of any misstatement, misrepresentation, fraud or deceit, or any unlawful act or omission

119 of said licensee, his agents or employees, while acting within the scope of their employment, and made,
120 committed or omitted in the business conducted under such license.

121 SECTION 7. Section 46G of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
122 by striking the entire section and inserting in place thereof the following:

123 Section 46G. All claims or suits brought in any court against a licensee may be brought in the
124 name of the person damaged upon the bond deposited by the licensee. If such licensee has departed from
125 the commonwealth with the intent to defraud his creditors or to avoid the service of summons in any
126 action brought under this section, or if the presence within the commonwealth of such licensee cannot be
127 discovered by the exercise of reasonable diligence, service shall be made upon the surety and by mailing
128 one copy of the summons to the last known post office address or residence of the licensee within or
129 without the commonwealth and a copy of the summons to the place where he conducted such
130 employment agency as shown by the records of the commissioner.

131 SECTION 8. Section 46H of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
132 by striking the entire section and inserting in place thereof the following:

133 Section 46H. Each licensee shall keep a register or other record keeping device approved by the
134 commissioner, in which shall be entered under the penalties of perjury the date of each application for
135 employment and the name and address of each applicant, a file designation for each such applicant, and
136 the name and address of a former employer of the applicant, or of a person to whom such applicant is
137 known. The licensee shall also enter in the same register or shall enter under the penalties of perjury in a
138 separate register, approved by the commissioner, the name and address of every employer from whom a
139 fee is received or charged, the date of such employer's request or assent that applicants be furnished, the
140 kind of position for which applicants are requested, the names of the applicants sent, the total amount of
141 the fee received or charged, and the rate of salary or wages agreed upon. Each licensee shall keep
142 complete and accurate written records of all receipts and income received or derived directly from the
143 operation of his employment agency. Each licensee or his duly authorized agent or employee shall
144 communicate with at least one of the persons given as reference by an applicant for domestic or
145 household work and the result of such communication shall be kept on file in such agency for a period of
146 at least three years. Every register shall be retained on the premises of the agency concerned for three
147 years following the date of the last entry therein. Each employment agency shall also enter into its register
148 the last home address; the name and address of the emigrant agent, if any, through whom such applicant
149 was obtained; the name and address of all persons to whom the employment agency has made payments
150 in connection with the recruitment of the applicant, and the amounts of such payments; and the total
151 charges made in the employment agency to the applicant. Said charges shall be separately stated by such
152 agency and shall include: (a) charges for transportation, (b) other charges and (c) the agency fee.

153 Each recruiting domestic employment agency shall furnish the commissioner on the first
154 Wednesday of each month, in writing, the following information with respect to each out of state resident
155 engaged as a domestic or household employee and placed by that agency during the preceding month: (a)
156 the name, and out of state home address of the applicant and the file designation assigned to the applicant
157 by the agency; (b) the rate of wage to be paid the applicant, and an itemization of all charges which the
158 employment agency has made to the applicant for its services; and (c) the name and address of any
159 emigrant agent, or other person or organization to whom the employment agency has made any payment,
160 or who or which helped recruit the applicant.

161 SECTION 9. Section 46I of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
162 by striking the entire section and inserting in place thereof the following:

163 Section 46I. Each employment agency shall furnish in writing each applicant for employment: (1)
164 information as to the name and address of the person for whom the applicant is to apply for such
165 employment, the kind and character of the employment, the anticipated rate of wages or compensation,
166 the agency fee, whether such employment is permanent or temporary, the name and address of the person
167 authorizing the hiring of such applicant, and the estimated cost of transportation if the services are
168 required outside of the town where such agency is located; and the total fee to be exacted by the
169 employment agency from the applicant, provided that nothing in this paragraph shall be construed to
170 prohibit a licensed employment agency from directing an applicant to employment by telephone, but such
171 telephone message shall comply with the disclosure requirements of this paragraph and shall be, within
172 one day, confirmed in writing by the employment agency and sent to the applicant; a carbon copy of such
173 confirmation shall be kept by the employment agency for a period of at least one year; (2) a true copy of
174 every contract executed between it and such applicant, which shall have printed thereon or attached
175 thereto a copy of section forty six L; and (3) a receipt for every charge made by the employment agency
176 to the applicant and which the applicant has paid.

177 The original or duplicate original copy of each such contract and a duplicate receipt for any
178 charges by the employment agency to the applicant shall be retained by the employment agency for three
179 years following the date on which the contract is executed or the payment is made, and shall be made
180 available for inspection by the commissioner or his duly authorized agent or inspector, upon his request.

181 SECTION 10. Section 46J of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
182 by striking the entire section and inserting in place thereof the following::

183 Section 46J. Each recruiting domestic agency which directly or indirectly engages or uses the
184 services of an emigrant agent, shall furnish the commissioner a list containing the name and address of all
185 emigrant agents from whom it accepts job applicants. If such emigrant agents are required to be licensed

186 in the places in which they recruit employees, no employment agency, directly or indirectly, shall accept
187 applicants from other than duly licensed emigrant agents.

188 Each recruiting domestic employment agency which is responsible, directly or indirectly, for
189 bringing into the commonwealth applicants from out of the commonwealth but within the United States
190 and which has arranged for their transportation to the city or town in the commonwealth where the agency
191 is licensed to conduct business shall provide that the transportation of such applicants be by duly licensed
192 common carriers of passengers. Each recruiting domestic employment agency responsible for bringing
193 into the commonwealth an applicant for employment from out of the commonwealth but within the
194 United States shall provide at its own expense suitable lodging and meals for any such applicant who is
195 not placed in employment the day he arrives at the office of the employment agency from the time he
196 reports at such agency until he is placed, or is returned to the place from which he was recruited, or is
197 given the option of returning to such place as hereinafter provided.

198 Each recruiting domestic employment agency responsible for bringing into the commonwealth an
199 applicant for employment from out of the commonwealth but within the United States shall provide the
200 return fare and reasonable allowance for one day's meals to any such applicant who was not placed in
201 employment, or who was placed in employment and said employment terminated within thirty days
202 thereafter, and who is without employment, and desires to return to the place from which he was
203 recruited.

204 The bond required to be deposited under section forty six F shall secure performance of the
205 provisions of the preceding two paragraphs. No domestic recruiting employment agency shall bring into
206 the commonwealth any applicant for employment without the commonwealth but within the United States
207 unless and until such agency has given such applicant a written statement, on a form approved by the
208 commissioner showing the nature and duties of the job for which the applicant is recruited, the anticipated
209 wages, the amount of the agency fee, the amount for transportation that the applicant will have to repay if
210 such amount has been advanced by the agency, and the amount of any other advances or charges. Such
211 statement shall indicate when such amounts are payable to the agency. A copy of such statement shall be
212 kept on file by the agency, and the copy shall have indicated on it the date when, and by whom, the
213 original statement was given to the applicant.

214 SECTION 11. Section 46K of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
215 by striking the entire section and inserting in place thereof the following:

216 Section 46K. An employment agency shall not engage in any of the following activities or
217 conduct:

218 (1) Publish or cause to be published any false, fraudulent or misleading information,
219 representation, promise, notice or advertisement;

220 (2) Advertise in newspapers or otherwise, or use letterheads or receipts or other written or printed
221 matter, unless such advertising or other matter contains the name and address of the employment agency
222 and the word "agency" or other language which clearly shows that the advertiser is an employment
223 agency, employment consultant, personnel consultant, employment counselor or other person who
224 conducts an employment agency.

225 (3) Direct an applicant to an employer for the purpose of obtaining employment without having
226 first obtained a recent bona fide order therefor; provided, that a qualified applicant may be directed to an
227 employer who has previously requested that he regularly be accorded interviews with applicants of certain
228 qualifications if a confirmation of the order is sent to the employer; and provided, further, that an
229 employment agency may attempt to sell the services of an applicant to an employer from whom no job
230 order has been received as long as this fact is told to the applicant before he is directed to the employer.
231 Any applicant who is referred to an employer contrary to the provisions of clause (3) without obtaining
232 employment thereby, shall be reimbursed by the employment agency for all ordinary and necessary travel
233 expenses incurred by the applicant as a result of such referral, within twenty four hours of making a
234 demand therefor;

235 (4) Send or cause to be sent any person to any employer where the employment agency knows, or
236 reasonably should have known, that the prospective employment is or would be in violation of state or
237 federal laws governing minimum wages or child labor or in violation of the law relating to compulsory
238 education;

239 (5) Send or cause to be sent any person to any place which the employment agency knows or
240 reasonably should have known is maintained for immoral or illicit purposes; nor send or cause to be sent
241 any female to any place which the employment agency knows or should have known permits persons
242 known to be prostitutes, gamblers or procurers or intoxicated persons to frequent such place;

243 (6) Compel any person to enter such agency for any purpose by use of force or otherwise;

244 (7) Require applicants for employees or employment to subscribe to any publication or incidental
245 service or contribute to the cost of advertising;

246 (8) Refuse to return on demand of an applicant any baggage or personal property belonging to
247 such applicant;

248 (9) Send or cause to be sent any applicant to any place which the agency knows or should know is
249 on strike unless the fact of such strike is told to the applicant;

250 (10) Solicit, persuade, induce or attempt to induce any employee to leave an employment if such
251 soliciting, persuading or inducing is for the purpose of securing a new fee from such employee, providing
252 that nothing herein shall prohibit notifying an applicant that a position exists where the applicant has
253 requested the agency to place him;

254 (11) Divide or share, or offer to divide or share service fees with employer clients; or

255 (12) Solicit, persuade, induce or attempt to induce any employer to create a vacancy by discharge.

256

257 SECTION 12. Section 46L of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
258 by striking the entire section and inserting in place thereof the following:

259 Section 46L. (A) An employment agency shall not charge to or accept from an applicant a fee or
260 other consideration unless in accordance with the terms of a written contract with a job applicant and
261 unless such agency has been responsible for referring such job applicant to an employer or such employer
262 to a job applicant and where as a result thereof such job applicant has been employed by such employer.

263 (B) No fee shall be charged or accepted for the registration of applicants for employees or
264 employment.

265 (C) The total fee charged to the job applicant shall not exceed the amounts enumerated in the
266 schedules set forth in this section. An employment agency shall not require an employee to pay any fee at
267 a rate faster than four equal installments each of which shall be payable at the end of the first four pay
268 periods following the employment or within a period of eight weeks, whichever is shorter.

269 MAXIMUM FEES.

270 (1) For domestics or household employees, other than domestics or household employees
271 described in paragraph (a), unskilled or untrained manual workers and laborers, and agricultural workers
272 the following shall be the maximum total fee to be charged or accepted in percentage of the first full
273 month's salary or wages actually received:

274	If no meals or lodging are provided	10%
275	If one meal per working day is provided	12%
276	If two meals per working day are provided	14%
277	If three meals and lodging per working day are provided	18%

278 (a) For domestics or household employees from outside of Massachusetts and within the United
279 States in connection with whose employment the recruiting domestic agency has engaged an emigrant
280 agent and who receive from their employer three meals per day and lodging not more than one week's
281 salary plus twenty one dollars; provided, that no fee under this paragraph shall exceed sixty five dollars, if
282 the employee is paid two hundred dollars or less per month; nor shall it exceed eighty dollars, if the
283 employee is paid over two hundred dollars per month.

284 (b) Where all parties to the employment agreement understand or agree at the time such
285 employment is entered into that it shall be for a period shorter than one month, the gross fee shall not
286 exceed ten, twelve, fourteen or eighteen per cent of the salary or wages actually paid.

287 (2) For nonprofessional trained or skilled industrial workers or mechanics the total fee charged or
288 accepted shall not exceed one week's wages.

289 Where all parties to the employment contract agree and understand at the time such employment contract
290 is entered into that it shall be for a period shorter than ten weeks, the gross fee shall not exceed ten per
291 cent of the wages or salary actually received.

292 (3) For models the gross fee to the agency from all sources shall not exceed ten per cent of the
293 amount payable to the applicant, provided, that the applicant is advised in writing of such fees; and
294 provided, further, that model agencies engaged in fields other than radio, television, film, video tape, film
295 commercials, or transcriptions, may charge an employer of an applicant for ancillary services provided
296 that the applicant is notified in writing of all such additional ancillary services.

297 (4) For all other employment the gross fee shall not exceed in percentage of the first full month's
298 salary or wages the following:

299 (a) Where such first full month's salary or wages is:

300	(1) less than \$225	25%
301	(2) at least \$225 but less than \$270	35%
302	(3) at least \$270 but less than \$300	40%
303	(4) at least \$300 but less than \$330	45%
304	(5) at least \$330 but less than \$365	50%
305	(6) at least \$365 but less than \$400	55%
306	(7) at least \$400	60%

307 (b) Where such other employment is such that the applicant will be paid on a straight
308 commission basis or on the basis of a drawing account plus commissions, the total fee shall be based on
309 the percentages in the above schedule applied to an amount equivalent to one twelfth of the computed
310 first year earnings as estimated by the employer.

311 (c) Where all parties to the employment contract agree and understand at the time such
312 employment contract is entered into that it shall be for a period shorter than four months, the gross fee
313 shall not exceed fifty per cent of the fee prescribed in the above schedule or ten per cent of the wages or
314 salary actually received, whichever is less.

315 (D) The fees established under this section shall be based upon the wage or salary at which the
316 applicant is hired.

317 If an applicant accepts employment, and fails to report initially for work, the total fee charged to
318 such applicant shall not exceed twenty five per cent of the maximum fee allowed under this section;
319 provided, however, if the applicant remains with his same employer the fee shall not exceed fifty percent.

320 In no case shall an employment agency receive any fees from employees which, when added to
321 the employer's fees to the employment agency exceed the fees specified in this section. Each applicant
322 shall be advised in writing by the agency of the total amount of any fee paid it by the employer for
323 placing such applicant.

324 The provisions of this section shall not apply to applicants who are hired at an annual wage of
325 over forty thousand dollars, nor shall they apply to any agency which is paid solely by employer clients.
326 Any contract in violation of this section shall be void.

327 SECTION 13. Section 46M of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
328 by striking the entire section and inserting in place thereof the following:

329 Section 46M. Any employment agency which collects, receives or retains a fee, deposit or other
330 payment contrary to or in excess of the provisions of section forty six L, shall return the excess portion
331 thereof within seven days of the receipt of a demand therefor.

332 SECTION 14. Section 46N of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
333 by striking the entire section and inserting in place thereof the following:

334 Section 46N. An employment agency other than one recruiting domestic employees shall contract
335 in writing with the applicant (employee) for services in securing employment for the payment by the
336 applicant of a service fee, in an amount mutually agreed upon between the applicant and such
337 employment agency, and shall file with the commissioner for approval a sample copy of the agreement to

338 be entered into between the applicant and the employment agency. The licensee or his authorized
 339 representative shall verbally make clear to the applicant the terms and conditions of the contract, with
 340 particular emphasis upon the fee to be paid for services to be rendered. Every applicant shall be given a
 341 copy of the contract he has entered into or is to enter into with the employment agency, and such contract
 342 shall carry the statement

343 "I have thoroughly read my contract with (Name of agency) and accept its terms." (Signature of
 344 Applicant)

345 In addition to the above, the following schedule ranging from \$55 a week to \$200 a week must be
 346 reproduced on cards or paper, the size of which should allow for legible reading. Each applicant must be
 347 given a copy complete with service charges indicated beside the weekly salary and a copy signed by the
 348 applicant must be retained by the employment agency.

349	NAME OF AGENCY		ADDRESS OF AGENCY			
350						
351	Weekly	Service	Weekly	Service	Weekly	Service
352	Salary	Charge	Salary	Charge	Salary	Charge
353	\$ 55.00	\$.....	\$105.00	\$.....	\$155.00	\$.....
354	\$ 60.00	\$.....	\$110.00	\$.....	\$160.00	\$.....
355	\$ 65.00	\$.....	\$115.00	\$.....	\$165.00	\$.....
356	\$ 70.00	\$.....	\$120.00	\$.....	\$170.00	\$.....
357	\$ 75.00	\$.....	\$125.00	\$.....	\$175.00	\$.....
358	\$ 80.00	\$.....	\$130.00	\$.....	\$180.00	\$.....
359	\$ 85.00	\$.....	\$135.00	\$.....	\$185.00	\$.....
360	\$ 90.00	\$.....	\$140.00	\$.....	\$190.00	\$.....
361	\$ 95.00	\$.....	\$145.00	\$.....	\$195.00	\$.....
362	\$100.00	\$.....	\$150.00	\$.....	\$200.00	\$.....

363 The contract fee must be based only upon the original wage or salary at which the applicant was
 364 hired.

365 Where employment is temporary, the employment agency shall be entitled to an amount
366 equivalent to ten per cent of the gross weekly wages paid or fraction thereof, but in no case where
367 employment is temporary shall a fee be charged in excess of the fee for permanent employment.

368 Permanent employment shall be defined as employment which in itself is good for ten weeks or
369 more. Temporary employment is employment which in itself is good for less than ten weeks.

370 When a contract entered into between the employment agency and the applicant for employment
371 clearly stipulates that voluntary resignation from employment or acceptance of employment and failure to
372 report for work by the applicant does not relieve the applicant from paying to the employment agency the
373 same fee he would have paid had he reported for duty or remained in employment for a period of ten
374 weeks or more, then the employment agency shall be entitled to collect the full service fee, provided the
375 applicant's failure to report for duty or his voluntary resignation is not occasioned by extenuating
376 circumstances. Any question as to what constitutes "extenuating circumstance" shall be decided by the
377 commissioner. Acceptance of other employment shall not fall within the meaning of "extenuating
378 circumstances". Any employee supplied by an employment agency shall be paid at a rate not less than the
379 applicable minimum wage or the applicable collective bargain rate for that position, whichever is greater.

380 SECTION 15. Section 46O of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
381 by striking the entire section and inserting in place thereof the following:

382 Section 46O. Refunds shall be made by employment agencies under the following conditions:

383 (a) If an applicant furnished employment is discharged within one month after the time of
384 entering upon such employment and such discharge is not for just cause, the employment agency shall on
385 demand refund to the applicant that portion of the fee paid in excess of ten per cent of the gross wages
386 paid to the applicant.

387 (b) Should it be determined that no employment of the kind applied for was open at the place to
388 which the applicant was directed or as specified by the employment agency, then all of the fee paid
389 together with cost of transportation in going to and returning from such place of employment shall be
390 refunded. An employment agency shall not be responsible to an applicant or an employer for any expense
391 incurred in connection with an interview unless the employment agency has failed to truthfully inform the
392 employer and the applicant of facts related to the applicant or employment with which the employment
393 agency is in possession.

394 (c) If an applicant for employment was unable to accept employment or to keep engagement for
395 unavoidable reasons, all of the fee paid shall be refunded.

396 (d) If an applicant for employment was unable to find the place of employment because of
397 insufficient address or directions all of the fee paid is to be refunded.

398 (e) The maximum fee shall be reduced to the extent that payment would result in the applicant's
399 average hourly wages for that period falling below the rates established by any applicable federal or state
400 minimum wage provision or by any applicable collective bargaining agreement.

401 (f) Any employer who utilizes an employment agency or who obtains applicants from an
402 employment agency shall not directly or indirectly deduct any part of the fees paid to an employment
403 agency from the wages or salary of any of his employees placed by such employment agency.

404 SECTION 16. Section 46P of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
405 by striking the entire section and inserting in place thereof the following:

406 Section 46P. Each employment agency shall post in a conspicuous place in such agency a copy of
407 sections forty six A to forty six O, inclusive, which shall be printed in large type in languages in which
408 persons commonly doing business with such office can understand. Such poster shall also contain the
409 name and address of the commissioner charged with the enforcement of said sections.

410 SECTION 17. Section 46Q of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
411 by striking the entire section and inserting in place thereof the following:

412 Section 46Q. The commissioner, or any duly authorized agent or inspector designated by him,
413 shall have authority to inspect the premises, registers, contract forms, receipt books, application forms,
414 referral forms, reference forms, reference reports, financial and other records of fees charged and refunds
415 made of each employment agent, which are essential to the operation of such agency, and of each
416 applicant for an employment agency license. The commissioner may suspend or revoke the license of any
417 employment agency if it fails to furnish information required under this section, or if such agency or any
418 of its employees hinders or interferes with any such duly authorized agent or inspector while in the
419 performance of his duties as hereinbefore provided. The commissioner or any such agent or inspector may
420 make a record of such information, and may require each agency to furnish quarterly, on a form supplied
421 by the department of labor and industries, any or all such information.

422 The commissioner may, subject to the provisions of chapter thirty A, establish such rules and
423 regulations as he deems necessary to carry out the provisions of sections forty six B to forty six R,
424 inclusive.

425 Any complaint against any person operating as an employment agency shall be made to the
426 commissioner by any interested person. The commissioner shall give reasonable notice thereof, not later
427 than five days thereafter, to said person by serving upon him either personally, by registered mail, at his

428 last place of residence, or by leaving with the person in charge of his office, a concise statement of the
429 facts constituting such complaint. The commission shall hold a hearing on such complaint not later than
430 two weeks from the date of the notice of such complaint. The commissioner when investigating any
431 matter pertaining to the issuance, transfer, revocation or suspension of a license may take such testimony
432 as may be necessary on which to base official action. When taking such testimony he may subpoena
433 witnesses and also direct the production before him of necessary material, books and papers. A calendar
434 of all hearings shall be kept by the commissioner and shall be posted in a conspicuous place in his office
435 for at least one day before the date of such hearings. The commissioner shall render his decision within
436 eight days from the time the matter is finally submitted to him. Said commissioner shall keep a record of
437 all such complaints and hearings.

438 If such hearings reveal that the employment agency or any employee thereof is guilty of any
439 immoral, fraudulent or illegal conduct in connection with the operation of such agency, or of any
440 violation of the provisions of sections forty six B to forty six R, inclusive, the commissioner may suspend
441 or revoke the license of such employment agency. If the commissioner suspends or revokes the license of
442 any employment agency, said action shall be subject to judicial review in proceedings brought pursuant to
443 chapter thirty A. If a license is revoked, another license shall not be issued within three years from the
444 date of such revocation to said licensed person or his representative.

445 SECTION 18. Section 46R of Chapter 140, as appearing in the 2006 Official Edition, is hereby amended
446 by striking the entire section and inserting in place thereof the following:

447 Section 46R. Whoever violates any provision of sections forty six B, forty six C, forty six E, forty
448 six F, forty six J, forty six K, forty six L, forty six M, forty six N and forty six O, shall be punished by a
449 fine of not more than five hundred dollars, or by imprisonment in the house of correction for not more
450 than one year, or both. Whoever violates any provision of sections forty six H, forty six I, and forty six P,
451 shall be punishable by a fine of not more than twenty five dollars. The commissioner may institute
452 proceedings based upon any such violation. Each violation of said sections shall constitute a separate
453 offense. Criminal prosecution for any such violation shall not preclude any person from recovering
454 money unlawfully collected, in a civil action.

455 Information secured pursuant to sections forty six A to forty six Q shall be confidential and for
456 the exclusive use and information of the commissioner in the discharge of his duties hereunder. Whoever,
457 except with the authority of the commissioner or pursuant to his rules or regulations, or as otherwise
458 required or authorized by law, shall disclose the same, shall be punished by a fine of not more than one
459 hundred dollars or by imprisonment for not more than six months, or both; provided, that nothing herein
460 shall be construed to prevent the commissioner from conducting any investigation or hearing as provided
461 for in said sections.