

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY - WATER POLLUTION CONTROL

PREAMBLE

- | | |
|--------------------------------|---------------------------------|
| <u>Section Affected</u> | <u>Rulemaking Action</u> |
| R18-9-120 | Repeal |
- The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
A.R.S. § 49-203(A)(4)
- The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Mr. Steven Pawlowski
Address: Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012
Telephone: (602) 207-2227
- An explanation of the rule, including the agency's reasons for initiating the rule:**
The Director proposes to repeal A.A.C. R18-9-120. The current rule states that the Director of the Arizona Department of Environmental Quality shall not issue an individual Aquifer Protection Permit [APP] unless the permittee certifies that the permittee understands the requirements and conditions of the permit and the penalties for violations of permit conditions, the APP rules, and the statutes that relate to APPs in Title 49, Chapter 2, Article 3 of the Arizona Revised Statutes. The Department's experience in implementing this section has shown that this certification requirement is unnecessary. Also, some permittees have not provided the required certification, thus preventing the timely issuance of individual APPs.
- A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
- The preliminary summary of the economic, small business, and consumer impact:**
The repeal of the certification requirement in R18-9-120 will have no economic, small business, or consumer impact. No economic impact statement is required for this rulemaking under A.R.S. §41-1055(D)(3) because the repeal of the certification requirement in R18-9-120 decreases the administrative burden on applicants for individual Aquifer Protection Permits. The repeal of the current rule will not result in increased costs to the Department for implementation or enforcement of the Aquifer Protection Permit rules.
- The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Mr. Steven Pawlowski
Address: Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012
Telephone: (602) 207-2227

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R20-5-313	New Section
R20-5-314	Repeal
R20-5-314	New Section
R20-5-315	Repeal
R20-5-315	New Section
R20-5-316	Repeal
R20-5-316	New Section
R20-5-317	Repeal
R20-5-317	New Section
R20-5-318	Repeal
R20-5-318	New Section
R20-5-319	New Section
R20-5-320	New Section
R20-5-321	New Section
R20-5-322	New Section
R20-5-323	New Section
R20-5-324	New Section
R20-5-325	New Section
R20-5-326	New Section
R20-5-327	New Section
R20-5-328	New Section
R20-5-329	New Section

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing Statute: A.R.S. § 23-523(1)
Implementing Statutes: A.R.S. §§ 23-522, 23-522.02, 23-526, 23-527, 23-529, 23-530, 23-532, and 23-534
3. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Laura McGrory, Assistant Chief Counsel
Address: Industrial Commission of Arizona
800 West Washington
Phoenix, Arizona 85007
Telephone: (602) 542-5781
Fax: (602) 542-6783
4. **An explanation of the rule, including the agency's reason for initiating the rule:**
In response to the requirement of A.R.S. § 41-1072 et seq. to enact licensing timeframe rules, the Industrial Commission initiated rulemaking to provide timeframes for the licensing of private employment agents. The Industrial Commission also recognized that, having last been amended in 1981, R20-5-301 et seq. needed updating in style, language and form. Therefore, the entire Article was rewritten to update the style, language and form of the Article and to articulate more clearly the requirements and process to obtain, renew, or maintain a private employment agent license. Last, in response to concerns articulated by the Arizona Employment Advisory Council and members of the industry, the Industrial Commission added new sections dealing with computation and payment of fees to a private employment agent, resolution of fee disputes, and advertising.
5. **A showing of good cause why the rule is necessary to promote statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
The proposed rule changes do not diminish a previous grant of authority of a political subdivision of this state.
6. **The preliminary summary of the economic, small business, and consumer impact:**
The Industrial Commission does not anticipate or foresee any measurable negative economic impact on small businesses or consumers as a result of the proposed changes that concern rules of procedure governing the application or renewal process. The Industrial Commission does believe that there could be a minimal to small economic impact to business resulting from the new section dealing with advertising. The Industrial Commission will also incur costs associated with reprinting its forms and printing the rules in a booklet form for distribution to the public.
7. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Laura L. McGrory, Assistant Chief Counsel
Address: Industrial Commission of Arizona
800 West Washington Street, Suite 303
Phoenix, Arizona 85007
Telephone: (602) 542-5781
Fax: (602) 542-6783

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8. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Date: May 7, 1998

Time: 9:30 a.m.

Location: Industrial Commission of Arizona, Third Floor Conference Room
800 West Washington Street
Phoenix, Arizona 85007

Nature: Oral and written comments will be accepted on or before the date set forth in this paragraph.

9. Any other matters prescribed by statute that are applicable to the specific rule or class of rules:

None.

10. Incorporation by reference and their location in the rules:

None.

11. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. THE INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 3. RULES AND REGULATIONS GOVERNING
PRIVATE EMPLOYMENT AGENCIES AGENCIES

Section	
R20-5-301.	Adoption Clause Definitions
R20-5-302.	Definitions Computation of Time
R20-5-303.	License Application Procedure Forms Prescribed by the Commission
R20-5-304.	Duration of License Timeframes for Processing Initial and Renewal Applications for Employment Agent License by Commission
R20-5-305.	Change of Agency Status Filing Requirements for Initial Application for Employment Agent License
R20-5-306.	Contracts, Receipts, Forms Written Examination
R20-5-307.	Applicant Paid Fees Renewal of Employment Agent License
R20-5-308.	Employer Paid Fees Substantive Review of Initial or Renewal Application for Employment Agent License
R20-5-309.	Copies and Receipts Decision by the Commission on an Initial or Renewal Application for Employment Agent License
R20-5-310.	Determining Right of Referral and Placement Payment of Initial License Fee Under A.R.S. §23-528
R20-5-311.	Complaints Regarding Misconduct by a Licensee and Procedures for Investigation and Disposition Right to Request a Hearing
R20-5-312.	Records Hearing Rights and Procedures
R20-5-313.	Decision Upon Hearing by Commission
R20-5-314.	Job Orders Request for Review
R20-5-315.	Labor Contractors Procedure for Investigation and Disposition of Complaints Filed Under A.R.S. §23-529
R20-5-316.	Talent and Modeling Agencies Reissuance of Employment Agent License After Suspension under A.R.S. §23-529 (D)
R20-5-317.	Employment Agencies Acting without a License Amendment of Employment Agent License
R20-5-318.	Effect of Rules and Regulations on Existing Licenses Form of Books, Registers and Records
R20-5-319.	Form and Requirements of Contracts
R20-5-320.	Bona Fide Job Order
R20-5-321.	Bona Fide Job Referral
R20-5-322.	Submission and Approval of Fee Schedule and

	<u>Receipts by Commission</u>
R20-5-323.	<u>Fees for Services</u>
R20-5-324.	<u>Fee Disputes</u>
R20-5-325.	<u>Determining Right of Referral and Placement</u>
R20-5-326.	<u>Advertising</u>
R20-5-327.	<u>Labor Contractors</u>
R20-5-328.	<u>Talent and Modeling Agencies</u>
R20-5-329.	<u>Employment Agencies Acting without a License</u>

ARTICLE 3. RULES AND REGULATIONS GOVERNING
PRIVATE EMPLOYMENT AGENCIES AGENCIES

~~R20-5-301. Adoption Clause Definitions~~

~~A. The following rules and regulations governing private employment agencies have been promulgated by the Employment Advisory Council and approved, fixed and ordered by the Industrial Commission of Arizona pursuant to the provisions of A.R.S. § 23-523, as necessary rules to carry out the provisions of Article II, Chapter III, Title 23, Arizona Revised Statutes. In connection with the adoption of these rules the Commission takes cognizance of other statutes of the state of Arizona related to the subject, including but not limited to the following:~~

- ~~1. A.R.S. §§ 41-1001 through 41-1008, Administrative Procedure.~~
- ~~2. A.R.S. §§ 12-901 through 12-914, Judicial Review of Administrative Decisions.~~
- ~~3. A.R.S. §§ 44-1441 through 44-1446, Trade Names.~~
- ~~4. A.R.S. §§ 10-104, Corporate Name.~~
- ~~5. A.R.S. §§ 44-1481, Fraudulent Advertising.~~

~~B. All present rules and regulations governing Private Employment Agencies are repealed as of the effective date of these rules and regulations. Copy of approved rules and regulations were filed with the Secretary of State on November 5, 1970.~~

~~In addition to the definitions provided in A.R.S. §23-521, the following definitions apply to this Article:~~

~~"Advertising" means any material, means, or medium used by a licensed employment agent for solicitation or promotion of business. This includes business cards, notices, or announcements in newspapers, radio, television, brochures, pamphlets, gift items, and signs. It also includes referral cards, invoices, letterheads, or other forms if the forms are used in combination with solicitation and promotion of business.~~

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"Applicant" means any individual, including a talent or model, seeking the services of a licensed employment agent.

"Applicant-paid fee" means a sum of money or value that is collected from an applicant for receiving employment services from a licensed employment agent.

"Bona fide job order" means an employer's or company's written or oral authorization to a licensed employment agent to refer an applicant to the employer.

"Business manager" means a person, firm, corporation, or association whose services to a talent or model are limited to giving financial advice or managing the business affairs of the artist or model.

"Candidate" means a person, firm, corporation, or association, applying for an employment agent license.

"Career counseling service" means a person, firm, corporation, or association that provides career assistance, career management, job search assistance, evaluation or planning, and information and advice on all career decisions including vocational guidance and employment counseling, interview preparation, and other information to enable an individual to secure employment, but does not include the following:

- a. A provider of job referral services;
- b. A provider of vocational rehabilitation as defined in A.R.S. §23-501;
- c. A person, firm, or corporation or association that engages solely in the preparation of resumes;
- d. A public or private educational institution;
- e. A psychologist licensed or certified in this State who provides career guidance and counseling to patients as part of the psychologist's practice;
- f. A person engaged in the practice of social work, counseling, or marital and family therapy as those terms are defined in A.R.S. §23-3251 who provides career counseling and guidance as part of the social work, marital and family therapy;
- g. A physician licensed in this State who provides career guidance and counseling to patients as part of the physician's practice;
- h. A priest, minister, rabbi or other clergy who provides career guidance and counseling as part of the clergy's practice; and
- i. An attorney licensed in this State who provides career guidance and counseling as part of the attorney's practice.

"Career counselor" means an individual working in a career counseling service to provide career assistance, career management, job search assistance, evaluation or planning, and information and advice on all career decisions including vocational guidance and employment counseling, interview preparation, and other information to enable an individual to secure employment. An employee of a career counseling service whose duties are primarily clerical in nature is not a career counselor.

"Commission" means the Industrial Commission of Arizona.

"Company" means a business that obtains applicants from a licensed talent and/or modeling agency.

"Complaint" means an oral or written communication made to the Department or to the Commission by any person alleging improper conduct by a licensed employment agent.

"Council" means the Arizona Employment Advisory Council.

"Department" means the Labor Department of the Industrial Commission of Arizona.

"Director" means the Director of the Industrial Commission of Arizona.

"Electronic media service" means a business that lists applications, resumes, or job openings on a computerized network or system.

"Engagement" means the employment of an individual as an actor, entertainer, model, or performer in an entertainment enterprise.

"Entertainment enterprise" means theater, motion pictures, radio, television, opera, ballet, modeling, circus, vaudeville or variety act, or other performance or exhibition oriented business.

"License" means a document issued by the Commission that authorizes a person to conduct the business of an employment agent.

"Labor contractor" means an employer as defined under A.R.S. Title 23, Chapter 6, who leases or provides temporary workers to a customer or client.

"Licensed employment agent" or "licensee" means an employment agent defined in A.R.S. §23-521(A) who holds a valid license issued by the Commission under A.R.S. §23-521 et seq.

"Managing agent" means any person, firm, corporation, or association that is designated by a licensed employment agent to be in charge of the operation of an employment agency or any of its branches or divisions.

"Model" means an individual that is employed to display clothes or other merchandise.

"Personal manager" means a person, firm, corporation, or association whose services are limited to counseling and advising a talent or model in connection with the talent's or model's professional career.

"Placement counselor" means an individual working in a placement counseling service to assist an applicant to obtain employment by providing career counseling services, referral services or registry services. An employee of a licensed employment agent whose duties are primarily clerical in nature is not a placement counselor.

"Placement counseling service" means a person, firm, corporation, or association that provides career counseling services, referral services, or registry services.

"Secretary" means the Director of the Industrial Commission of Arizona Labor Department who serves as the Secretary for the Employment Advisory Council.

"Talent" means an individual rendering performing services in an entertainment enterprise, including musicians.

"Talent and/or modeling agency or agent" means a person, firm, corporation, or association that provides employment information to a talent or model for the purpose of securing an engagement for the talent or model.

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R20-5-302. Definitions Computation of Time

In these rules and regulations, unless the context otherwise requires, the following words and terms shall have the following meanings:

1. "Commission" means the Industrial Commission of Arizona.
2. "Council" means the Arizona Employment Advisory Council.
3. "Director" and "Secretary" mean the Director of the Industrial Commission of Arizona who serves as secretary of the Employment Advisory Council.
4. "License" means a license issued by the Industrial Commission of Arizona to conduct the business of an employment agent as defined in A.R.S. §23-521.
5. "Licensee" means and includes an individual, sole proprietorship, firm, partnership, association or corporation holding a valid license that has not been revoked or suspended.
6. "Applicant for a license" means a person who submits an application for a license.
7. "Applicant" means a person seeking employment through the services of a licensee.
8. "Employer" means a person, sole proprietorship, partnership, corporation, association or other legal entity requesting the services of a licensee or employing an applicant.
9. "Department" means the Labor Department of the Industrial Commission of Arizona.
10. "Counselor" or "placement counselor" means and includes, but is not limited to, a person employed by a licensee whose duties are to counsel, advise, solicit, classify, screen, contact, interview, test or refer either an applicant or employer in any manner whatsoever but shall not include any employee of a licensee whose duties are primarily clerical in nature and do not normally include the duties performed by a "counselor".
11. "Responsible managing agent" means a person or persons who, in addition to the licensee, may be designated by the licensee to be in charge of the operation of the licensee's agency or any of its branches or divisions.
12. "Bona fide job order" means an employee or his agent's written or oral authorization to a licensee which authorizes the licensee to refer an applicant to the employer.
13. "Fee paid" or "employer paid fee" means that the employer has agreed to pay the entire fee directly to the agency.
14. "Applicant paid fee" means that all or any portion of the fee shall be the responsibility of the applicant.
15. "Complaint" means an oral or written communication made to the Department or the Commission by an applicant or other person alleging improper conduct by a licensee.

A. In computing any period of time prescribed or allowed by this Article, the Commission shall not include the day of the act or event from which the period of time begins to run. The Commission shall include the last day of the period computed unless it is a Saturday, Sunday or legal holiday in which event the period shall run until the end of the next day that is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than 11 days, the Commission shall exclude intermediate Saturdays, Sundays and legal holidays in the computation of time.

B. Except as otherwise provided by law, the Commission may extend time limits prescribed by this Article for good cause.

R20-5-303. License Application Procedure Forms Pre-

scribed by the Commission

- A.** Application. Any person, sole proprietorship, firm, partnership, association or corporation desiring to engage in the business or operation of an employment agency as defined in A.R.S. § 23-251 shall file with the Department an application for license on forms prescribed and furnished by the Commission. Said application for a license shall be completed in full and made under oath.
- B.** Information to accompany application for license
1. All applications for a license shall be accompanied by the personal history of the applicant for a license, partners of a partnership, and the responsible managing agents. The history shall state whether or not said individuals have ever been licensed as employment agents in this or any other state or jurisdiction. The history shall also set forth any experience said individuals have had in the employment agency business. The history shall further state whether or not said individuals have had any adversely adjudicated complaints filed against them in this or any other state or jurisdiction while acting as a licensee or employee of a licensee in this state or any other state and shall set forth in full the nature of any such complaint and the disposition thereof.
 2. The application shall set forth the name and trade name under which licensee proposes to do business.
 3. If the applicant for a license does not intend to be licensed as a corporation, he shall submit a letter from the Secretary of State stating that any proposed trade name does not violate any name protected by A.R.S. §§44-1441 through 44-1446.
 4. If the applicant for a license is a corporation, the application shall be accompanied by a certified Resolution of said corporation authorizing the application for a license and naming the individuals authorized to act on behalf of the corporation and a copy of the Articles of Incorporation as filed with the Corporation Commission.
 5. The applicant for a license, partners of a partnership, and the responsible managing agents shall furnish the Department with references from former employers and other persons, preferably residents of the state who have known them for two years or more.
- C.** Surety bond. Applications for a license shall be accompanied by a surety bond in the amount of five thousand dollars or the applicant for a license may comply with the provisions of A.R.S. § 23-527 by posting a cash deposit. The cash deposit shall initially be in the amount of \$1,000.00, but prior to the issuance of the license, said cash deposit must be increased to \$5,000.00 or replaced by a surety bond in that amount. If a license is approved and granted, the cash deposit or surety bond shall at all times be maintained at \$5,000.00.
- D.** Investigation. Upon the filing of an application for a license, the Department shall undertake an investigation to determine if the applicant qualifies for a license pursuant to the provisions of A.R.S. §§23-526 and 23-527. The management and ownership of the proposed employment agency shall be investigated and such investigation shall include, but not be limited to, the following matters:
1. Moral character
 2. Business integrity
 3. Character of active management
 4. Financial responsibility
 5. Location of place of business
 6. Proposed name of agency.
- The Department shall complete the investigation within 90 days unless circumstances require a longer time.

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E. Prior to the initial issuance of an employment agency license, the responsible managing agent or other persons determined by the Commission to be responsible for the operation of the agency shall take a written examination prepared by the Director with the assistance of the Advisory Council. The examination shall include but not be limited to the following:

1. Laws pertaining to employment agents
2. Rules and regulations pertaining to employment agents
3. Laws pertaining to employment discrimination
4. Other pertinent labor laws

The minimum passing grade for this examination is 80%. Any person who has passed the examination shall not be required to re-take such examination in connection with a new license application for a period of five years.

F. Notice of qualification. If, after investigation by the Department and recommendation by the Council, the Industrial Commission approves an employment agency license, the applicant for such license shall be notified of such approval and, upon receipt of the license fee required by A.R.S. A§23-528, the license shall be issued. A license fee which is not paid within 90 days of such notice shall require a new application if the applicant for a license wishes to act as an employment agency.

G. Notice of rejection. If the Commission determines, after consideration of the recommendation of the Council and the report of investigation from the Department, that the applicant for a license does not qualify for such license, it shall notify the applicant for a license of this fact by registered mail sent to his last known address. The rejected applicant for a license shall have 20 days from the date of mailing of the Commission's order denying a license in which to apply to the Industrial Commission of Arizona for a rehearing of its order. Should the Commission deny the rehearing, the aggrieved party is referred to his rights under A.R.S. §§12-901 to 12-914.

The Commission shall make the following forms which contain the information listed available upon request.

1. Initial application for employment agent license:
 - a. Name of candidate, including other names used by the candidate;
 - b. Personal identifying information of candidate;
 - c. Residence, length of residence, and place of prior residency of candidate;
 - d. Employment history of candidate, including work history and experience as an employment agent;
 - e. Personal references of candidate;
 - f. Felony and misdemeanor convictions of candidate;
 - g. Financial disclosure information of candidate;
 - h. Name, tradename, divisions and all other names under which candidate intends to do business;
 - i. Proposed location of all business sites;
 - j. Organizational structure of business;
 - k. Names and addresses of all persons or firms having a financial interest in the business and the percentage of financial interest of each person's or firm's share;
 - l. Job classifications of proposed clientele;
 - m. Fee rates and schedules of business;
 - n. Names and addresses of all persons who will be involved in the management and supervision of the business at all locations of the business;
 - o. Information relating to Worker's Compensation Insurance; and

- p. Request for college transcripts and military discharge records.
2. Business financial statement:
 - a. Name of candidate;
 - b. Business address of candidate; and
 - c. Disclosure of financial information of candidate, including information relating to assets and liabilities of candidate.
3. Personal financial statement:
 - a. Name of candidate;
 - b. Home address of candidate; and
 - c. Disclosure of personal financial information of candidate, including information relating to assets and liabilities of candidate, annual income and expenditures of candidate, names of all persons having an interest in the assets of the candidate, list and present fair market value of real estate, stock and bonds in which the candidate has an interest, insurance maintained by the candidate, and whether the candidate is a guarantor for any debt.
4. Supplemental application:
 - a. Name and phone number of managing agent, including other names used by the managing agent;
 - b. Name of private employment agent with whom the managing agent intends to associate;
 - c. Personal identifying information of managing agent;
 - d. Residence, length of residence, and place of prior residency of managing agent;
 - e. Employment history of managing agent, including work history and experience as an employment agent;
 - f. Personal references of managing agent;
 - g. Felony and misdemeanor convictions of managing agent;
 - h. Financial disclosure information of managing agent; and
 - i. Request for college transcripts and military discharge records.
5. Renewal application for employment agent license:
 - a. Name, address, and telephone number of licensee seeking renewal;
 - b. Position of licensee with employment agent business;
 - c. Name, tradename, including abbreviations of name or tradename of licensee seeking renewal;
 - d. Current legal status of licensee seeking renewal;
 - e. Name of managing agent;
 - f. Type of business seeking to be renewed;
 - g. Address of all business sites of licensee;
 - h. Name of all divisions operated by licensee;
 - i. Names and addresses of other businesses operated by licensee;
 - j. Number of placement counselors employed by licensee during preceding year;
 - k. Schedule of fees and rules implemented by licensee and any changes in the schedule of fees and rules during the preceding year;
 - l. List any changes made in the preceding year to forms required by A.R.S. § 23-521 et seq. and this Article;
 - m. Information pertaining to complaints received in the preceding year by the licensee; and
 - n. Information pertaining to compliance with the Arizona worker's compensation laws.

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R20-5-304. Duration of License Timeframes for Processing Initial and Renewal Applications for Employment Agent License by Commission

- A.** Period issued. All licenses to operate private employment agencies shall be valid for one year from the date of issue and may be subject to annual renewal renewed for a like period of time upon payment of the fees provided in A.R.S. §23-528.
- B.** Renewal. The Department shall notify each licensee in writing of the expiration of the license at least forty-five days prior to the date of expiration. Renewal applications, accompanied by the license fee, must be submitted to the Department at least ten days prior to the date of expiration of the license. Any licensee who is delinquent in filing a renewal application prior to the expiration date must file a new application and comply with the provisions of R20-5-303.
- C.** At the time of application for renewal, the Department's records regarding the licensee's operation shall be reviewed, including but not limited to records of complaints and other inspections conducted by the Department. The Department shall present its findings to the Council. If the Council deems that it would not be in the public interest to renew the license, the Council may recommend to the Director and request that the Commission issue an order to the licensee involved to show cause why the license should not be renewed upon good cause in accordance with the provisions of A.R.S. §23-529.
- D.** Revocation. In addition to the procedure set forth in R20-5-304(B), the Council may at any time recommend to the Director that the Commission order any licensee to show cause why his license should not be revoked pursuant to the provisions of A.R.S. §23-529.

A. Administrative completeness review.

- 1.** The Department shall review an initial or renewal application for employment agent license within 15 days of receipt of the application to determine whether the application contains the information required by A.R.S. §23-521 et seq. and this Article. The Department shall inform the candidate or licensee by written notice whether the application is deemed complete or deficient within the timeframe provided in this subsection. The Department shall deem the application withdrawn if the candidate or licensee fails to file a complete application within 45 days of being notified by the Department that the application is incomplete or deficient. A candidate or licensee can request an extension of time to file a complete application by filing a written request with the Department before the Department deems the application withdrawn. For good cause shown, the Department may grant an extension of time by serving written notice of the extension upon the candidate or licensee.

B. Substantive review.

- 1.** Initial applications. Within 120 days after an initial application is deemed complete, the Commission shall determine whether the initial application for employment agent license meets the substantive criteria of A.R.S. §23-521 et seq. and this Article and shall issue a written order granting or denying the license.
- 2.** Renewal applications. Within 60 days after a renewal application is deemed complete, the Commission shall determine whether the renewal application for employment agent license meets the substantive criteria of A.R.S. §23-521 et seq. and this Article and shall issue a written order refusing to renew the license or grant the renewal by issuing a new license.

C. Overall Review.

- 1.** Initial application. Within 135 days after receipt of an initial application for an employment agent license, the Commission shall issue an order denying or granting the initial license.
- 2.** Renewal application. Within 75 days after receipt of a renewal application for an employment agent license, the Commission shall issue an order refusing to renew the license or grant the renewal by issuing a new license.

R20-5-305. Change of Agency Status Filing Requirements for Initial Application for Employment Agent License

- A.** Change of licensee name. Licensees desiring to change the name or trade name of their agency must give the Department 30 days advance written notice. In addition, the licensee must obtain an amendment or rider to the surety bond showing the new name (not applicable to trade name changes). The bond rider must be obtained from the surety and submitted to the Department before the new name can be finalized. A change in the licensee's name does not require a new license but only an amendment to the current license. Upon completion of the above requirements, the licensee shall return his current license to the Department for such amendment and reissuance.
- B.** Change of agency location. Licensees desiring to change the location of their place of business must give the Department 30 days advance written notice. Such change does not require a new license but an amendment to the current license. The licensee shall return his current license to the Department for such amendment.
- C.** Transfer of license. A license is not transferable. A sale by a licensee of his business requires an application for an issuance of a new license. A change of legal entity or form of doing business does not require a new license but only an amendment to the current license. Licensees shall give the Department 30 days advance written notice of such change and return the current license to the Department for such amendment and reissuance.
- D.** Relinquishment of license. Should the licensee intend to discontinue the business of an employment agency, he must give the Department 30 days advance written notice. Upon receipt of such notice, the Department shall conduct an investigation into the matters relating to the licensee's operation to, but not limited to, the payment of any annual fees and the settlement of any pending claims. If, after such investigation, the Department determines that the licensee's operations are in order, it shall notify the bond surety of its concurrence in the cancellation of the bond. If the licensee has made a cash deposit, the Department shall instruct the State Treasurer to return such cash deposit. The licensee shall return his current license to the Department for cancellation.
- E.** Cancellation of the bond by the surety. Upon receipt of a notice of cancellation of the bond by the surety, the Department will advise the licensee in writing of such cancellation. A new bond or cash deposit must be received at least ten days prior to the effective date of cancellation of the existing bond. If a new bond or cash deposit is not received within ten days prior to the cancellation of the existing bond, the Department shall advise the licensee in writing that he may not act as an employment agent effective the date of the cancellation of the bond until such date as a new bond or cash deposit is received by the Department. Failure to maintain the surety bond or cash deposit at all times shall be considered gross negligence and cause for disciplinary action by the Commission as stipulated in A.R.S. §23-529.

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- F.** ~~Disassociation of responsible managing agent. Should any responsible managing agent become disassociated with a licensee for any reason, the licensee shall notify the Department of this fact within ten days and shall at that time designate another responsible managing agent unless there was more than one responsible managing agent and the remaining managing agent(s) will be managing the agency without replacement of the disassociating responsible managing agent. A new responsible managing agent may be designated at any time. Such newly designated responsible managing agent shall fully qualify including having passed the written examination provided for in R20-5-303(E) within 30 days of appointment.~~
- A.** Initial application for employment agent license.
1. A candidate shall complete an initial application on forms approved by the Commission.
 2. A candidate shall file the candidate's application for an employment agent license with the Department. An application is considered filed when it is received at the office of the Department and stamped by the Department with the date of filing.
 3. An application shall be typewritten or written in legible text.
 4. The individual completing the application shall sign and date the application and have the signature notarized.
 5. The individual completing and signing the application shall verify that the information contained in and submitted with the application is true and correct.
- B.** If a candidate intends to do business as a sole proprietorship, then the candidate shall include the following information with the candidate's application for an initial employment agent license:
1. A supplemental application completed by all managing agents of the candidate. All supplemental applications shall comply with the requirements of subsection (A);
 2. A personal financial statement completed by the candidate;
 3. A business financial statement completed by the candidate;
 4. College transcripts of the candidate and all managing agents;
 5. Military discharge records of the candidate and all managing agents;
 6. A \$5000 Surety Bond or a \$1000 cash deposit that shall be increased to a \$5000 cash deposit before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;
 7. A copy of the registration of the proposed tradename through the Arizona Secretary of State;
 8. Completion of the written examination required by A.R.S. §23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;
 9. A copy of the franchise agreement, if the proposed business is a franchise; and
 10. A copy of the sale/purchase agreement, if the candidate is purchasing an existing employment agent business.
- C.** If a candidate intends to do business as a partnership, then the candidate shall include the following information with the candidate's application for an initial employment agent license:
1. A supplemental application completed by all partners and managing agents of the candidate. All supplemental applications shall comply with the requirements of subsection (A);
2. A personal financial statement completed for each partner by each partner;
 3. A business financial statement completed by all partners;
 4. College transcripts of all partners and all managing agents;
 5. Military discharge records of all partners and all managing agents;
 6. A \$5000 Surety Bond or a \$1000 cash deposit that shall be increased to a \$5000 cash deposit before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;
 7. A copy of the registration of the proposed tradename through the Arizona Secretary of State;
 8. A copy of the partnership agreement;
 9. A copy of the franchise agreement, if the proposed business is a franchise;
 10. A copy of the sale/purchase agreement, if the candidate is purchasing an existing employment agent business;
 11. Completion of the written examination required by A.R.S. §23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;
- D.** If the candidate intends to do business as a corporation, then an officer of the corporation shall complete and sign the initial application for employment agent license and shall include the following information in the candidate's application:
1. A supplemental application completed by all managing agents of the candidate. All Supplemental Applications shall comply with the requirements of subsection (A);
 2. A business financial statement of the corporation;
 3. A personal financial statement of the officer completing the application for employment agent license;
 4. College transcripts of all managing agents and the officer completing the application for employment agent license;
 5. Military discharge records of all managing agents and the officer completing the application;
 6. A \$5000 Surety Bond or a \$1000 cash deposit that shall be increased to a \$5000 cash deposit before a license is issued. The candidate may replace the cash deposit with a \$5000 surety bond;
 7. Completion of the written examination required by A.R.S. §23-526 with a passing grade by the candidate and all managing agents. An 80% grade is required to pass the examination;
 8. Certified resolution of the corporation authorizing the application for an employment agent license and naming the individuals authorized to act on behalf on the corporation;
 9. A copy of the candidate's articles of incorporation on file with the Arizona Corporation Commission;
 10. A copy of the franchise agreement, if the proposed business is a franchise;
 11. A copy of the sale/purchase agreement, if the candidate is purchasing an existing employment agent business;
 12. A copy of the registration of the proposed tradename through the Arizona Secretary of State.
- E.** A candidate shall include with an application for initial employment agent license a schedule of fees and charges as described in A.R.S. §23-530(A).
- F.** A candidate shall include with an application for initial employment agent license a copy of all rules and regulations as described in A.R.S. §23-530(A).

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G. A candidate shall include with an application for initial employment agent license sample forms of the following documents:

1. Receipts;
2. Contracts;
3. Job order forms; and
4. Other documents that relate in any manner to the fee that is charged an applicant.

R20-5-306. Contracts, Receipts, Forms Written Examination

- A.** Review. All receipts, contracts and other forms related to fees used by a licensee in the conduct of his business to which an applicant may become a party shall be submitted to the Department for review and approval. The Department shall review the foregoing within 30 days from the date of filing.
- B.** Contract terms and provisions. All contracts shall set forth in clear and unambiguous terms the respective rights and obligations of the applicants and the licensee and shall include the following provisions:
1. A schedule of applicable fees approved by the Commission;
 2. A clear statement defining when the applicant becomes obligated for the payment of a fee;
 3. A clear statement of the conditions precedent for an adjustment of a fee.
- C.** Definitions. If the following terms or provisions are used in a contract with an applicant, they shall be deemed to have the following meanings:
1. Acceptance—A position is accepted when the applicant agrees to begin work at an agreed remuneration.
 2. Permanent placement—All placements shall be considered permanent unless the contract expressly states otherwise.
 3. Change from permanent to temporary placement—Permanent employment shall be considered temporary when within 90 days after employment commences the employment is terminated through “no fault” of the applicant, or the employment is voluntarily terminated by the applicant with “just cause”.
 4. Fee schedule—A percentage or set fee on file with an approved by the Commission, for all fees to be charged the applicant, both temporary and permanent placement.
 5. Failure to report—If an applicant accepts a position and fails to report for work, the applicant may be charged the full fee except when extreme circumstances prevent the applicant from reporting and the applicant notifies the licensee of this fact prior to the starting date.
 6. Discharge for fault—An employee may be considered at fault for the following reasons:
 - a. Willful absence from duty
 - b. Having been convicted, subsequent to his employment, of crime or misdemeanor reflecting upon his employment
 - c. Not being of good moral character
 - d. Being drunk or disorderly on the job
 - e. Violating written company policies or rules
 - f. Misrepresenting or withholding, without the knowledge of the licensee, any information regarding health, education, work experience, personal history, responsibility of training, if such information would have caused the employer to refuse employment.
 7. Just cause—An employee has “just cause” for voluntarily terminating employment when the conditions of employment were either misrepresented or withheld

from the applicant and said conditions would have, if known at the time of acceptance, caused the applicant to have reasonably refused employment. Such conditions of employment shall include, but not be limited to:

- a. Probationary or trial periods
- b. Bankruptcy or cessation of operation by the employer
- c. Failure to pay wages when due
- d. Conditions at the place of employment which are injurious to the employee's health or morals
- e. Change in remuneration or assignment to a different type or lower status than was agreed to when the position was accepted
- f. Lack of ability to perform assigned duties provided the applicant's abilities have not been misrepresented.

D. Required statements. All contracts or agreements between the licensee and applicant shall contain the following exact statement:

This agency is licensed, bonded and operates under the law of the state of Arizona and is regulated by the Industrial Commission of Arizona.

E. The following wording shall appear immediately before the signature of the applicant:

I hereby acknowledge receipt of a copy of this contract.

F. Copy of contract to applicant. A copy of the original or duplicate original of each contract, promissory note, or other form to which the applicant becomes a party with the licensee shall be given to the applicant by the licensee executing such contract or document.

A. Except as otherwise provided in this Article, all individuals required by A.R.S. §23-526 and this Article to take the written examination described in A.R.S. §23-526(B), shall complete the examination within 12 months prior to the filing of an initial application for employment agent license with the Department. The Commission shall not grant an employment agent license unless all individuals required by A.R.S. §23-526 and this Article to take the written examination have answered correctly 80% of the questions asked in the examination.

B. The Department shall give notice of the time and place of the written examination upon request.

C. Examination results are valid for a period of 12 months. If after 12 months, the individual taking the examination does not use the results in support of an application for an employment agent license, then that individual shall be required to retake the examination.

R20-5-307. Applicant Paid Fees Renewal of Employment Agent License

A. When applicant fee is earned. A placement fee is earned and may be charged an applicant by a licensee only when one of the following exists:

1. When the applicant accepts employment as a result of a referral by a licensee. The referral must be based on a bona fide job order.
2. When the applicant fails to secure or does not accept the position to which the applicant was originally referred but accepts another position with that employer or with any employer to whom the first employer refers the applicant within six months as a result, directly or indirectly, of the original referral by the licensee.
3. When the applicant informs another person of the availability of the position described in the referral by the licensee and said person accepts the position within six months after the date of the referral.

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- B.** Basis for fee charges. All placement fees shall be computed on the basis of permanent employment unless the contract expressly states otherwise. However, if the employee is discharged without fault or voluntarily terminates with just cause within a time determined by the contract, a temporary fee will be charged.
- C.** Registration Fees. No agency shall charge a registration fee which has not been approved by the Commission.
- D.** Death. Should a licensee be instrumental in placing an applicant in employment and should the applicant die prior to the completion of the period of time required for permanent employment, the licensee shall be entitled to an adjusted temporary fee.
- E.** Amount of permanent fee. For permanent employment as defined by these regulations, an employment agency may charge placement fees to applicants not to exceed those filed with the Commission. An agency may charge less than the maximum schedule of fees.
- F.** In case of temporary employment, a placement fee may be charged not to exceed a percentage of all gross earnings during the time of employment. Such fee shall be filed with the Commission and shall not exceed the amount of fee charged for the same permanent position.
- G.** Refunds of fee
1. Any money, fee or valuable consideration received by a licensee in excess of the amount filed by each agency with the Commission shall be refunded without delay upon request of the person who paid the placement fee.
 2. If an applicant shall apply and not obtain employment at the place to which he is sent by licensee, or, after being accepted by an employer, the applicant is not permitted by said employer to commence work through no fault of the applicant, the whole amount of any placement fee paid by the applicant shall be refunded without delay upon request of the applicant.
 3. If a refund is found to be due an applicant such amount shall be refunded applicant without delay.
- H.** Complaints, conflicts and procedure for settlement and disposition of disputes involving a refund of a fee
1. Filing complaint. Any applicant having a complaint involving a refund of a fee against any licensee may file with the Department on a form to be provided by the Department a written complaint, verified under oath, stating the name and address of the agency complained against, and fully detailing the nature of the complaint. Such complaint shall state the nature of the dispute with some particularity. Any complaint hereunder shall be filed within 60 days of the date on which the event giving rise to the complaint occurred.
 2. Copy of complaint to licensee. Upon filing of a complaint with the Department, a copy of the complaint shall be sent by certified mail to the licensee complained against and the licensee shall reply to the complaint within ten days of the mailing of said complaint. The reply shall include copies of all written receipts and agreements which the licensee has in his possession concerning the particular complaint. If requested by the complainant, the Department may provide a copy of the licensee's response to the complainant.
 3. Determination by the Department. Upon conclusion of its investigation, the Department shall make a determination of the complaint. The Department may refer the complaint to the Council for its recommendation. The Department shall notify both the complainant and the licensee of its determination.
4. Request for hearing. Either party may file a written request for a hearing before the Commission within 15 days from the receipt of notice of the Department's determination.
- a. Parties may appear in their own behalf or by counsel. When an attorney represents a party, he shall advise the Department of his name, address and telephone number.
 - b. All witnesses at a hearing shall testify under oath or affirmation.
 - c. The Department may issue subpoenas requiring the attendance and testimony of witnesses whose testimony is material and take depositions as deemed necessary.
 - d. The proceedings at hearings may be stenographically reported.
 - e. Within 30 days after the conclusion of a hearing the Commission shall render a decision in writing. Findings of fact and conclusions of law shall be separately stated. Copies of the Commission's findings and order shall be sent by certified mail to the parties.
6. A party aggrieved by a decision of the Commission may seek review of the decision pursuant to the provisions of Title 12, Chapter 7, Article 6.
- A.** A licensee can apply for renewal its employment agent license under A.R.S. §23-528 by filing a completed renewal application with the Department before the date of the expiration of the license. In addition to the information described in R20-5-303(5), a licensee shall include the following in its renewal application: Renewal license fee described in A.R.S. §23-528 (B);
- B.** The Commission shall deem an employment agent license expired if a renewal application is not filed with the Department before the expiration date of the employment agent license. If the formerly licensed agent wishes to continue to act as a private employment agent, then the formerly licensed agent shall file a new application which meets the requirements of this Article for an initial application.
- C.** If a timely and complete renewal application is filed with the Department under this Article, the Commission shall consider the existing employment agent license valid, subject to compliance with A.R.S. §23-531 et seq. and this Article, until a new license is issued or an order of the Commission refusing to renew becomes final.
- R20-5-308. Employer-Paid Fees Substantive Review of Initial or Renewal Application for Employment Agent License**
- A.** An employment agency which operates exclusively on an employer-paid fee basis shall include a statement to this effect in its application for a license and subsequent applications for renewal thereof.
- B.** If a complaint is filed by an employer against a licensee, such complaint shall be investigated in accordance with R20-5-311.
- C.** If an applicant accepts a position to which he was referred by an agency with the understanding that the fee or any portion of the fee was to be paid by the employer, and he leaves that position for any reason, he shall not be liable to the agency for that part of the placement fee understood to be paid by the employer, notwithstanding contractual provisions to the contrary.
- A.** When a completed initial or renewal application for employment agent license is filed, the Department shall investigate the candidate or licensee to verify whether the information contained in and submitted with the initial or renewal appli-

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cation for employment agent license is accurate and reasonable. The Department shall also conduct an investigation of the candidate or licensee, in accordance with A.R.S. §23-523(3) and §23-524, to determine whether the candidate or licensee has a history or record of any of the following:

1. Dishonesty;
 2. Financial instability or irregularity, including a record of misappropriation, conversion, or irregular withholding or accounting of money belonging to another;
 3. Incompetence;
 4. Gross negligence;
 5. Bribery;
 6. Willful or repeated disregard of the requirements of Title 23, Chapter 3, Article 2;
 7. Source of injury or loss to the public; or
 8. Lack of education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.
- B. The Department shall verify that all individuals who are required by this Article to take the written examination required by A.R.S. §23-526(B) have received a passing score of 80%.
- C. The Department shall present the findings of its investigation described in subsections (A) and (B) to the Council. The Council shall make its recommendation regarding an initial or renewal application for employment agent license based on the information submitted by the candidate or licensee and the investigation of the Department. Under the authority of A.R.S. §23-522.02, the Council shall recommend that an application for an initial or renewal license be denied if the Council finds one or more of the following conditions:
1. Material misrepresentation or fraud in the initial or renewal application;
 2. The candidate, licensee, or managing agent has a history or record of dishonesty;
 3. The candidate, licensee, or managing agent has a history or record of financial instability or irregularity, including a record of misappropriation, conversion or irregular withholding or accounting of money belonging to another;
 4. The candidate, licensee, or managing agent has a history or record of incompetence;
 5. The candidate, licensee, or managing agent has a history or record of gross negligence;
 6. The candidate, licensee, or managing agent has a history or record of bribery;
 7. The candidate, licensee, or managing agent has a history or record of willful or repeated disregard of the requirements of Title 23, Chapter 3, Article 2;
 8. The candidate, licensee, or managing agent has a history or record of causing, directly or indirectly, injury or loss to the public; or
 9. The candidate, licensee, or managing agent lacks the education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.
- D. The Department shall present the recommendation of the Council pertaining to initial applications to the Commission. The Department shall also present to the Commission the recommendation of the Council that denies a renewal application. If the Council recommends that a renewal application be granted, the Department is not required to present the recommendation to the Commission. In that event, the Department

shall notify the licensee of the approval by sending the licensee its renewed license.

R20-5-309. Copies and Receipts Decision by the Commission on an Initial or Renewal Application for Employment Agent License

- A. Receipts for funds received. For any fee received from an applicant by a licensee, the licensee shall give to said applicant a receipt upon a form pursuant to A.R.S. §23-531(A).
- B. Applicant's copy of receipt. All receipts shall be made and numbered in original and duplicate. The original shall be given to the applicant paying the fee and the duplicate shall be on file at the employment agency.
- A. In addition to the requirements imposed by A.R.S. §23-521 et seq., the Commission shall consider the following before granting or denying an initial or renewal employment agent license:
1. The information submitted by the candidate or licensee;
 2. The findings of the investigation by the Department; and
 3. The recommendation of the Council.
- B. Under the authority in A.R.S. §23-523 and 23-524, the Commission shall deny an application for an initial or renewal license if the Commission finds one or more of the following conditions:
1. Material misrepresentation or fraud in the initial or renewal application;
 2. The candidate, licensee, or managing agent has a history or record of dishonesty;
 3. The candidate, licensee, or managing agent has a history or record of financial instability or irregularity, including a record of misappropriation, conversion or irregular withholding or accounting of money belonging to another;
 4. The candidate, licensee, or managing agent has a history or record of incompetence;
 5. The candidate, licensee, or managing agent has a history or record of gross negligence;
 6. The candidate, licensee, or managing agent has a history or record of bribery;
 7. The candidate, licensee, or managing agent has a history or record of willful or repeated disregard of the requirements of Title 23, Chapter 3, Article 2;
 8. The candidate, licensee, or managing agent has a history or record of causing, directly or indirectly, injury or loss to the public; or
 9. The candidate, licensee, or managing agent lacks the education, experience, training, or skill to enable the candidate, licensee, or managing agent to competently discharge the duties and responsibilities of a licensed employment agent.
- C. The Commission shall issue written findings and an order granting or denying an employment agent license.
- D. If the Commission denies an employment agent license, the Department shall serve a copy of the Commission's written findings and order upon the candidate or licensee within 5 days of the date the Commission issues its findings and order.
- E. If the Commission grants a renewal application for employment agent license, then the Department shall provide the licensee with a renewed license within 5 days of the date the Commission issues its written findings and order.
- F. If the Commission grants an initial application for employment agent license, then the Department shall provide the candidate with written notification of that approval. The written notification shall include a statement that the license approved by the Commission will be issued upon receipt of

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the annual fee required under A.R.S. §23-528 and that the approval will expire within 45 days unless the fee is paid.

R20-5-310. Determining Right of Referral and Placement Payment of Initial License Fee Under A.R.S. §23-528

- A.** Right of referral. As between two licensees, the licensee entitled to the placement fee is the licensee who first completes a bona fide referral. However, if after the expiration of 30 days from the date of the referral by a licensee to an employer, no active interest or consideration is being given said applicant by the employer through the original referral, and a second licensee, who has an oral or written authorization from the employer, refers the same applicant to the same employer and the applicant secures employment as a result of the second referral, then the second licensee is entitled to the fee.
- B.** A bona fide referral. A referral is bona fide when all of the following are completed:
1. When the agency informs the applicant of the name and location of the employer, including the name of the individual to whom the applicant will report for an interview.
 2. When the applicant is informed of the job specifications and salary range.
 3. When the employer is informed of the applicant's name and qualifications.
 4. When both the employer and the applicant agree, either directly or by authorized arrangement of the referring agency, to meet for an interview.
- A.** The Commission shall not issue an initial employment agent license granted under this Article until the candidate pays the license fee required under A.R.S. §23-528.
- B.** A candidate shall pay the license fee required under A.R.S. §23-528 within 45 days of the date the Commission grants the initial application for employment agent license.
- C.** If a candidate fails to pay the license fee required under A.R.S. §23-528 within the time provided in this Section, the Commission shall deem the order approving an initial application for employment agent license to be expired. In that event, the Commission shall require the candidate to file a new application if the candidate still seeks to be licensed as an employment agent.

R20-5-311. Complaints Regarding Misconduct by a Licensee and Procedures for Investigation and Disposition Right to Request a Hearing

- A.** Filing complaint. Any person having a complaint alleging misconduct by a licensee may file with the Department on a form provided by the Department a written complaint, verified under oath, stating the name and address of the licensee and fully detailing the nature of the complaint. Any complaint hereunder shall be filed within 90 days of the date on which the event giving rise to the complaint occurred.
- B.** Investigation by the Department. Upon receipt of the complaint, the Department shall conduct a thorough investigation of the facts relative to the alleged misconduct. If, upon completion of its investigation, the Commission determines that there is sufficient evidence to warrant a hearing, the Commission shall direct the secretary of the Commission to file a verified complaint pursuant to A.R.S. §23-529 and to prepare a notice of hearing.
- C.** Notice of hearing. The notice of hearing shall be served by registered or certified mail upon the licensee, together with a copy of the complaint setting forth the charge or charges to be heard. The notice shall contain the time and place of the hearing to be held not less than 30 and not more than 40 days after the mailing of the notice. A licensee may file a written

response with the Commission within 20 days of the date of receipt of the complaint.

- D.** Conduct of hearing. A licensee may appear personally or be represented by counsel at the hearing, present witnesses and evidence in his defense and cross-examine witnesses. All witnesses shall testify under oath or affirmation. The Commission may issue subpoenas requiring the attendance and testimony of witnesses whose testimony is material and take depositions as deemed necessary. The proceedings at the hearing shall be stenographically reported.
- E.** Findings and order by the Commission. Upon conclusion of the hearing, the Commission shall, not later than 30 days, serve a copy of its findings and order upon the licensee by certified mail. A licensee aggrieved by an order of the Commission may seek review of the order pursuant to the provisions of Title 12, Chapter 7, Article 6.
- A.** A candidate or licensee shall have 30 days from the date the Commission findings and order is served under R20-5-309 to request a hearing.
- B.** A request for hearing shall be in writing and signed by the candidate or licensee or the candidate's or licensee's legal representative. The candidate or licensee shall file the request for hearing with the Department.
- C.** The Commission shall deem its findings and order final if a request for hearing is not received by the Department within the time specified in subsection (A).

R20-5-312. Records Hearing Rights and Procedures

- A.** Accurate records. Each licensee shall keep true and correct records in the English language of the business transactions of his office.
All information entered on the foregoing records shall be legible and understandable and in accordance with generally accepted accounting procedure.
- B.** Bona fide job order
1. A licensee who charges an applicant a fee is required to complete a bona fide job order for each position on which he makes a referral. Such licensee shall maintain a record of his job orders for three years following the last action involved on that job order, which shall be recorded on a form containing the following:
 - a. Person communicating job order to the agency
 - b. Date
 - c. Name of the person recording the job order
 - d. Name and address of employer and name of person to whom the applicant is to report for an interview
 - e. Job title and basic requirements.
 2. The licensee who charges an applicant a fee shall keep a record of all applicants referred to jobs and the date of referral either on the bona fide job order or other suitable record.
- C.** False entries. A licensee shall not make any false entries in the record required by the Commission to be kept as herein provided.
- A.** Burden of proof
1. Except as provided in subsection (A)(2) and R20-5-324, in all proceedings arising out of Title 23, Chapter 3, Article 2, the candidate or licensee shall have the burden of proof to establish that it has met the requirements of A.R.S. §23-521 et seq. and this Article.
 2. In revocation and suspension hearings, the Commission shall have the burden of proof to establish that the licensee committed the acts described in A.R.S. §23-529(A).
- B.** Roles of Chair and Chief Counsel.

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1. The Chair of the Commission or designee shall preside over hearings held under this Article. Except as otherwise provided in this Section, the Chair shall apply the provisions of A.R.S. § 41-1062 to hearings held under this Article and shall have the authority and power of a presiding officer as described in A.R.S. § 41-1062.
 2. The Chief Counsel of the Commission shall represent the Commission in hearings held before the Commission and upon direction of the Chair of the Commission shall issue on behalf of the Commission all notices and subpoenas required under this Section. In the discretion of the Chief Counsel, the Chief Counsel may assign an attorney from the Legal Division of the Commission to represent the Department.
- C. Appearance by a party.**
1. Except as otherwise provided by law, the parties may appear on their own behalf or through counsel.
 2. When an attorney appears or intends to appear before the Commission, the attorney shall notify the Commission, in writing, of the attorney's name, address, and telephone number and the name and address of the person on whose behalf the attorney appears.
- D. Filing and service.**
1. For purposes of this Section, a document is deemed filed when the Commission receives the document. All documents required to be filed in this Section with the Commission shall be served upon the Chief Counsel of the Industrial Commission and upon all parties to the proceeding.
 2. Except as otherwise provided in A.R.S. § 23-521, et seq. and this Article, service of all documents upon the Commission, candidate, licensee or applicant shall be by personal service or by mail. Personal service includes delivery upon the Commission or party. Service by mail includes every type of service except personal service and is complete on mailing.
- E. Notice of hearing.**
1. The Commission shall give the parties at least 20 days notice of hearing.
 2. A notice of hearing shall be in writing and mailed to the address of the candidate or licensee as shown on the application for employment agent license or upon the candidate's or licensee's representative if a notice of appearance has been filed by the representative. In the case of a fee dispute hearing, a notice of hearing shall be mailed to the address of the applicant as shown on the complaint and the licensee as shown on the answer, if an answer is filed. If no answer is filed, then the notice of hearing shall be sent to the last known mailing address of the licensee as shown on the records of the Commission.
 3. A notice of hearing shall comply with the requirements in A.R.S. §41-1061(B).
- F. Evidence.**
1. The civil rules of evidence do not apply to hearings held under this Section.
 2. The parties may make opening and closing statements with the permission of the Commission if the statements will be helpful to a determination of the issues.
 3. All witnesses at a hearing shall testify under oath or affirmation.
 4. The parties may present evidence and conduct cross-examination of witnesses.
 5. Documentary evidence may be received into evidence and shall be filed no later than 15 days before the date of the hearing. Upon request or upon direction from the chair of the Commission, the Commission may issue a subpoena to the author of any document submitted into evidence to appear and testify at the hearing.
6. Upon written request by a party or upon direction from the chair of the Commission, the Commission may issue a subpoena requiring the attendance and testimony of a witness whose testimony is material. A subpoena shall be requested no later than 10 days before the date of the hearing.
 7. Upon written request by a party or upon direction from the chair of the Commission, the Commission may issue a subpoena duces tecum requiring the production of documents or other tangible evidence. The written request by a party shall contain a statement explaining the general relevance, materiality and reasonable particularity of the documentary or other tangible evidence and the facts to be proved by them.
- G. Transcript of Proceedings.** Hearings before the Commission shall be stenographically reported or mechanically recorded. Any party desiring a copy of the transcript shall obtain a copy from the court reporter.
- R20-5-313. Renumbered Decision Upon Hearing by Commission**
- A.** A decision of the Commission to deny an initial or renewal application shall be based upon the grounds in R20-5-309(B) and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. The decision of the Commission to revoke or suspend a license shall be based upon the grounds in A.R.S. §23-529 and shall be made by a majority vote of the quorum of Commission members present when the decision is rendered at a public meeting. After a decision is rendered at a public meeting, the Commission shall issue a written decision upon hearing which shall include findings of fact and conclusions of law, separately stated.
 - B.** The Commission decision is final unless a candidate or licensee requests review under R20-5-314 within 30 days from the date the written decision is issued.
- R20-5-314. Job Orders Request for Review**
- A.** Bona fide job order required. No employment agent shall offer or hold himself out as in a position to secure a specific position without having a bona fide job order or misrepresent any other material matter in connection with any employment, work or situation he offers or holds himself out in a position to secure. This rule shall not apply to institutional advertising.
 - B.** Unauthorized applicant solicitation. No employment agent shall offer or hold himself out as in a position to secure or furnish employment for an applicant or prospective applicant by initially contacting him/her in any way at the applicant's employer.
- A.** A party may request review of a Commission decision issued under R20-5-313 by filing with the Commission a written request for review no later than 30 days after the written decision is mailed to the parties.
 - B.** A request for review shall be based upon 1 or more of the following grounds which have materially affected the rights of a party:
 1. Irregularities in the hearing proceedings or any order or abuse of discretion whereby the party seeking review was deprived of a fair hearing;
 2. Misconduct by the Department, Council, Commission, or any party to the hearing;

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3. Accident or surprise which could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
5. Excessive or insufficient sanctions or penalties imposed at hearing;
6. Error in the admission or rejection of evidence, or errors of law occurring at, or during the course of, the hearing;
7. Bias or prejudice of the Department, Council, or Commission; and
8. That the order, decision, or findings of fact are not justified by the evidence or are contrary to law.

- C. A request for review shall state the specific facts and laws in support of the request and shall specify the relief sought by the request.
- D. The Commission shall issue a decision upon review no later than 30 days after receiving a request for review.
- E. The Commission's decision upon review is final unless a candidate or licensee seeks judicial review as provided in A.R.S. §12-901 et seq.

R20-5-315. Labor Contractors Procedure for Investigation and Disposition of Complaints Filed Under A.R.S. §23-529

- A. "Labor contractor" means any person, who, for a fee or other compensation, employs an individual to render personal services to, for or under the direction of a third person.
- B. Labor contractors employing individuals to render part-time or temporary personal services to, for or under the direction of social security taxes, state and federal unemployment insurance, carry workmen's compensation insurance as required by state law, and sustain responsibility for the acts of their employees while rendering services to, for or under the direction of a third person shall not be considered as employment agents.
- A. A complaint described in A.R.S. §23-529 shall be filed with the Department within 90 days of the date on which the event giving rise to the complaint occurred.
- B. Upon receipt of a complaint, the Department shall conduct a thorough investigation of the facts relative to the alleged misconduct including obtaining a response from the licensee that is the subject of the complaint. If, upon completion of its investigation, the Department determines that there is sufficient evidence to warrant a revocation or suspension hearing, then the Department shall present its findings to the Commission. If the Commission agrees with the Department that there is sufficient evidence to warrant a revocation or suspension hearing, then the Commission shall direct the secretary of the Commission to serve the subject licensee with a verified complaint under A.R.S. §23-529. In addition to the requirements set forth in A.R.S. § 23-529, the verified complaint shall contain the factual findings of the Department and a statement that the Commission shall consider the failure of the licensee to appear at hearing to be an admission of the factual findings in the verified complaint.
- C. Except as provided in A.R.S. § 23-529, R20-5-312, R20-5-313, and R20-5-314 govern hearing rights and procedures for revocation and suspension hearings.

R20-5-316. Talent and Modeling Agencies Reissuance of Employment Agent License After Suspension under A.R.S. §23-529 (D)

- A. Definitions
1. A "talent and modeling agency" means a person, firm, corporation, or association which, for a fee, commission or charge, engages in the occupation of procuring, offer-

ing, promising, or attempting to provide engagements for artists or models.

2. "Artist" means a person rendering professional service in motion picture, theatrical, radio, television and other entertainment enterprises.
 3. "Engagement" means any engagement or employment of a person as an actor, entertainer or model, or performer in a circus, vaudeville, theatrical, or other entertainment, exhibition, or performances.
 4. "Emergency engagement" means an engagement which has to be performed within 48 hours from the time when the contract is made.
 5. "Business manager" means a person, firm, or corporation whose services to an artist are limited to the giving of financial advice or management of financial affairs.
 6. "Personal manager" is a person, firm, or corporation whose services are limited to counseling and advising an artist in and in connection with his professional career as an actor.
- B. No person, firm, corporation or association shall conduct in the state of Arizona the business of a talent and/or modeling agent without obtaining an employment agency license. The following activities shall not be considered as conducting the business of a talent agent in this state:
1. The production of theatrical or musical arts or stage shows consisting of responsibility for an entire program;
 2. Interstate activities, placement and bookings;
 3. Acting as exclusive business or personal manager for an artist;
 4. Casting services.
- C. The rules and regulations governing private employment agencies shall apply to talent and modeling agencies.
- D. A talent and modeling agency shall investigate any employer who is offering employment to an artist or model to reasonably assure that such employer has not defaulted in the payment of salaries, fees or other compensation to artists and models he has employed.
- E. A talent and modeling agency shall execute with each artist or model a contract which includes the name and address of the applicant; the name and address of the employer; the time and duration of such engagement; the amount to be paid to such applicant; the character of entertainment to be given or services to be rendered; the number of performances per day or per week that are to be given by said applicant. Such contracts or statements shall contain no other conditions and provisions except such as are equitable between the parties thereto and do not constitute an unreasonable restriction of business. Forms of such contracts shall be approved by the Department. The artist or model shall receive a copy of such contract.
- F. The terms of contracts entered into by a talent agency and an artist shall not exceed two years. Such contracts, however, may be renewed and may be terminated by mutual consent of the parties to the contract.
- G. No contract of a talent agency for agency services rendered or to be rendered an artist may specify a higher rate of commission than that which is on file with the Department. Such commissions shall be payable for the period specified in the agency contract only if and when the artist receives compensation on which such commissions are payable.
- H. Every talent agency shall keep records in which shall be entered:
1. The name and address of each artist or model employed such agency;
 2. The amount of fee received from such artist or model;

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3. Each employment secured by such artist or model during the term of the contract with the agency and the amount of compensation received by the artist or model. No talent agency, its agent or employees shall make any false entry in any such records.

All books, records and other papers kept by any talent and modeling agency shall be open at all reasonable hours to the inspection of the Department. Every talent and modeling agency shall furnish to the Department upon request a true copy of such books, records, and papers of any portion thereof and shall make such reports as the Department prescribes.

- A. A formerly licensed employment agent may file a request with the Commission after the Commission's decision suspending the license is deemed final asking that its license be reissued. The request for reissuance shall be filed with the Department and shall include the following:
1. The grounds and facts supporting the request for reissuance;
 2. All action taken by the formerly licensed employment agent to correct, remedy, or address the reason that the Commission suspended the license; and
 3. All information required in an initial application, unless unchanged, in which case a verified statement that the information required for an initial employment agent license is true and correct as originally submitted.
- B. The Department shall review the request for reissuance of employment agent license for administrative completeness within 15 days of receipt of the request.
- C. Within 60 days after the expiration of the timeframe described in subsection (B), the Commission shall conduct a hearing to determine whether the previously suspended license should be reissued. The Commission shall reissue the suspended license when it appears by substantial evidence that the licensee has corrected or remedied the reason that the Commission suspended the license and the licensee has not engaged in any acts in violation of Title 23, Chapter 3, Article 2 or this Article during the time that the license was suspended.
- D. R20-5-312, R20-5-313 and R20-5-314 govern hearing rights and procedure for this Section.

**R20-5-317. Employment Agencies Acting without a License
Amendment of Employment Agent License**

- A. The Department shall investigate the nature and scope of the business of any person, firm, corporation or association when such business appears to be within the scope of the definition of an "employment agent" contained in A.R.S. §23-521.
- B. Such investigation may include, but not be limited to, written reports from the person, firm, corporation and association, inspection of records, and depositions from witnesses.
- C. If, after thorough investigation by the Department, it is determined that such person, firm, corporation and association is conducting the business of an employment agent in the state of Arizona without a license, the Department shall forthwith submit the entire record of its investigation, along with the Department's findings, to the appropriate law enforcement agency for criminal prosecution in accordance with the provisions of A.R.S. §23-536.
- A. A licensee shall apply to the Department for an amendment to its employment agent license 30 days before:
1. Changing the name under which the employment agent license was issued; or
 2. Changing the location of the employment agency.

- B. The Department shall review a request for amendment and shall issue an amended license 15 days after receipt of a licensee's current license and the following, if applicable:

1. If the licensee changes the name of the employment agency, the licensee shall submit an amendment or rider of the surety bond showing the new name; or
2. If the licensee changes the licensee's tradename, the licensee shall submit a copy of the registration of the new tradename with the Arizona Secretary of State and submit an amendment or rider of the surety bond showing the new name.

- C. Transfer or sale of license prohibited.

1. A licensee shall not transfer to another the licensee's employment agent license.
2. A licensee shall not sell the licensee's employment agent license. A purchaser of a licensee's business shall not operate the applicant paid fee business until the purchaser is licensed by the Industrial Commission under A.R.S. § 23- 521 et seq. and this Article.

- D. Before a licensee changes its legal status or form of doing business, the licensee shall file an initial application for an employment agent license for the new business.

- E. Relinquishment of license.

1. A licensee shall give the Department 30 days written notice before terminating or discontinuing business as an employment agent.
2. After receipt of a notice of intent to terminate or discontinue, the Department shall conduct an investigation of the licensee's operation to determine whether the operations are in order and in compliance with A.R.S. §23-521 et seq. and this Article.
3. If the Department determines that the licensee's operations are in order it shall notify the licensee and the company issuing the surety bond that the Department approves the discontinuance of the licensee's business and cancellation of the bond. If the licensee has made a cash deposit, the Department shall instruct the State Treasurer to return the cash deposit. After the Department notifies the licensee of its approval to discontinue business, the licensee shall return its license to the Department for cancellation.
4. If after an investigation of the licensee's operation the Department determines that the licensee's operation is not in order (e.g. pending claims, refund claims), then the Department shall not approve the cancellation of the surety bond or return of the licensee's cash deposit until the licensee resolves all pending matters to the satisfaction of the Department.

- F. Cancellation of the bond by the surety.

1. The Department shall provide written notice to a licensee within 5 days of a notice of cancellation of the bond by the surety. A licensee shall submit to the Department a new bond or cash deposit at least 10 days before the existing bond is canceled.
2. If a licensee fails to provide to the Department a new bond or cash deposit within 10 days before the cancellation of the existing bond, the Department shall advise the licensee in writing that the licensee may not act as an employment agent from the date of the cancellation until the date a new bond or cash deposit is received by the Department.
3. The failure to maintain a surety bond or cash deposit at all times constitutes gross negligence and cause for disciplinary action under A.R.S. §23-529.

- G. Disassociation of managing agent.

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1. A licensee shall notify the Department within 10 days if any managing agent is disassociated from a licensee.
2. At the time of disassociation, a licensee shall appoint another managing agent unless an existing managing agent(s) will be managing the employment agency without replacement of the disassociating managing agent.
3. A newly appointed managing agent shall complete and file a supplemental application within 30 days of appointment.
4. A newly appointed managing agent shall take and pass the written examination required by A.R.S. §23-526 and R20-5-306.
5. The Department shall advise a licensee whether an application filed by a newly appointed managing agent is deemed complete within 10 days from the date the application is filed. The Department shall issue findings and an order approving or disapproving the appointment of a newly appointed managing agent within 45 days of the date that the licensee is notified the application is complete. The Department shall disapprove the appointment of the new managing agent if the Department finds one or more of the following conditions:
 - a. Material misrepresentation or fraud in the newly appointed managing agent's supplemental application;
 - b. The newly appointed managing agent has a history or record of dishonesty;
 - c. The newly appointed managing agent has a history or record of financial instability or irregularity including a record of misappropriation, conversion, or irregular withholding or accounting of money belonging to another;
 - d. The newly appointed managing agent has a history or record of incompetence;
 - e. The newly appointed managing agent has a history or record of gross negligence;
 - f. The newly appointed managing agent has a history or record of bribery;
 - g. The newly appointed managing agent has a history or record of willful disregard of the requirements of Title 23, Chapter 3, Article 2;
 - h. The newly appointed managing agent has a history or record of injury or loss to the public; and
 - i. The newly appointed managing agent lacks the education, experience, training, or skill to enable the newly appointed managing agent to competently discharge the duties and responsibilities of a managing agent.
6. The Department shall deem its findings and order issued under subsection (G) final unless the licensee requests a hearing before the Commission within 30 days of the date that the findings and order is issued. The request for hearing shall be in writing, signed by the licensee or the licensee's legal representative and filed with the Commission. The Commission shall consider the factors in subsection (G) when approving or disapproving the appointment of a new managing agent. R20-5-312, R20-5-313, and R20-5-314 shall govern hearing rights and procedure for a request for hearing filed under this subsection.

R20-5-318. Effect of Rules and Regulations on Existing Licensees Form of Books, Registers and Records

- A. These rules shall apply from the time of their adoption to all licensees heretofore licensed by the Commission with the

exception that said existing licensees will not be required to go through the procedures of obtaining a new license.

- B.** A licensee whose employment agency changes its status as described in R20-5-305 after the adoption of these rules and regulations shall be required to comply with their provisions as regards the changes made in the agency's status.
- A.** A licensee shall keep true and correct records of all the business transactions related to the business of an employment agency, including records documenting all bona fide job orders or referrals and copies of all advertisements of the licensee. The licensee shall ensure that all records are legible, understandable and maintained in the office of the licensee for at least 3 years.
- B.** Summary record of bona fide job orders or referrals.
1. In addition to the requirements of subsection (A), a licensee shall maintain a summary record of the licensee's job orders and referrals for the prior 3 years which is recorded on a form containing the following:
 - a. Name of the individual communicating the job order;
 - b. Name of the individual communicating the job referral;
 - c. Date of the job order and job referral;
 - d. Name of the individual recording the job order and job referral;
 - e. Name and address of employer or company placing the job order;
 - f. Name of individual to whom the applicant is to report for an interview;
 - g. Job title and basic requirements of the job contained in job order and referral; and
 - h. Name of applicant referred;

R20-5-319. Form and Requirements of Contracts

- A.** Contract terms and provisions. A licensee shall ensure that all contracts between a licensee and applicant set forth in clear and unambiguous terms the respective rights and obligations of the applicant and licensee and include the following:
1. The name and address of the applicant and licensee;
 2. A list of the current schedule of fees and charges described in A.R.S. §23-530 (A) and submitted to the Commission;
 3. A clear statement defining when the applicant becomes obligated for the payment of a fee;
 4. A clear statement describing the circumstances under which the applicant is entitled to an adjustment, waiver, or refund of a fee;
 5. A clear statement describing the services performed by the licensee, including if applicable, the duration of the contract;
 6. A statement that the employment agency is licensed, bonded, operates under the laws of Arizona, and is regulated by the Industrial Commission of Arizona;
 7. An acknowledgment by the applicant that the applicant has received a copy of the signed contract; and
 8. Except for contracts between an applicant and a talent and modeling agent, a statement that employment is considered to be temporary when within 90 days after employment begins the employment is terminated through "no fault" of the applicant, or the applicant voluntarily terminates the employment with "just cause".
 9. The following statement shall be included in all contracts between an applicant and career counseling service in no smaller than 10 point bold face type: "No verbal or written promise or guarantee of any job or

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employment is made or implied under the terms of the contract.

- B.** An applicant is deemed to have accepted a position when the applicant agrees with an employer or company to start work at an agreed-upon wage.
- C.** Except for contracts between an applicant and a talent and modeling agent all placements are considered permanent unless the contract expressly states otherwise or within 90 days after employment begins the employment is terminated through "no fault" of the applicant, or the applicant voluntarily terminates the employment with "just cause".
- D.** A licensee shall provide the applicant a copy or duplicate original of all documents signed by either or both the applicant and licensee.
- E.** The duration and terms of a contract entered into by a talent and modeling agent and applicant shall not exceed 2 years. A contract may be renewed or terminated by mutual consent of the parties.
- F.** If a term of a contract entered into by a talent and modeling agent and applicant provides that the applicant's remuneration is paid directly to the talent and modeling agent by a company, the talent and modeling agent shall pay the applicant the salary received, less the talent and modeling agent's fee, no later than 7 days after receiving the remuneration from the company.
- G.** A talent and modeling agent shall not specify in a contract with an applicant a higher rate of commission than that which is on file with the Department.

R20-5-320. Bona Fide Job Order

- A.** A licensee shall not offer or represent to an applicant a specific position without having a bona fide job order.
- B.** A licensee shall not misrepresent any matter in connection with a bona fide job order.
- C.** A licensee shall not initiate contact with any applicant at the applicant's current place or places of employment for any reason related to the licensee's employment agency business without the applicant's written permission.

R20-5-321. Bona Fide Job Referral

- A.** A referral from a licensee, other than a talent and modeling agent, is bona fide when all of the following are completed:
 - 1.** The licensee informs the applicant of the name and location of an employer that has placed a bona fide job order, including the name of the individual to whom the applicant will report for an interview;
 - 2.** The licensee informs the applicant of the job specifications and salary range, including the nature, terms and conditions of the position;
 - 3.** The licensee informs the employer of the applicant's name and qualifications; and
 - 4.** The employer and applicant agree either directly or by authorized arrangement of the licensee, to meet for an interview.
- B.** A referral from a talent and modeling agent is bona fide when all of the following are completed:
 - 1.** The talent and modeling agent informs the applicant of the name and location of a company that has placed a bona fide job order;
 - 2.** The talent and modeling agent informs the applicant of the time and duration of the contracted engagement and the amount to be paid to the applicant for the engagement; and
 - 3.** The talent and modeling agent gives the applicant a description of the entertainment or services to be performed by the applicant, including the nature, terms, and

conditions of the position, and if applicable, the number of performances per day or week required of the applicant.

R20-5-322. Submission and Approval of Fee Schedule and Receipts by Commission

- A.** The Department shall not approve a fee schedule or receipt submitted by a candidate or licensee unless the schedule or receipt is in a form that is reasonably understandable by applicants.
- B.** The Department shall consider the following factors in determining the reasonableness of a fee under A.R.S. § 23-530(B):
 - 1.** The fee customarily charged in the locality for similar employment services;
 - 2.** The time and labor required of the candidate or licensee;
 - 3.** The skill required to perform the employment services properly; and
 - 4.** The experience, reputation, and ability of the candidate or licensee performing the employment services.
- C.** A licensee may change its schedule of fees by filing an amended schedule of fees with the Department. The licensee shall not use the amended schedule of fees until the schedule has been approved by the Department.
- D.** The Department shall review a licensee's amended schedule of fees within 30 days from the date of filing to determine whether the schedule complies with this Article.

R20-5-323. Fees for Services

- A.** Pursuant to A.R.S. §23-530 and subject to subsection (D), a licensee, other than a talent and modeling agent or career counselor, may charge an applicant a fee when any of the following occur:
 - 1.** The applicant accepts employment as a result of a bona fide job order;
 - 2.** The applicant accepts employment as a result of a bona fide job order and fails to report for work, except when justifiable circumstances prevent the applicant from reporting to work. For purposes of this Section 'justifiable circumstances' include death of an applicant or family member, serious physical or psychological illness or condition of an applicant or family member or 'just cause' as defined in R20-5-323(F)
 - 3.** The applicant fails to secure or does not accept a position to which the applicant was originally referred but accepts another position with that employer or with any employer to whom the first employer refers the applicant within 6 months as a result of the original referral by the licensee; and
 - 4.** The applicant informs another person of the availability of the position described in the referral by the licensee and that person accepts the position within 6 months after the date of the referral.
- B.** Pursuant to A.R.S. §23-530 and subject to subsection (D), a talent and modeling agent may charge an applicant a fee when the applicant receives compensation from the company to whom the applicant was sent under a bona fide referral.
- C.** Pursuant to A.R.S. §23-530 and subject to subsection (D), a career counselor may either charge an applicant a fee after the applicant receives satisfactory services from the career counselor, or require payment in advance of services, provided the career counselor provides prompt refunds when satisfactory services are not provided to the applicant.
- D.** Computation of a fee by a licensee other than a talent and modeling agent or career counselor.
 - 1.** A licensee shall not charge a full fee but may charge an adjusted temporary fee to an applicant who starts work

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but before the expiration of 90 days stops work for the following reasons:

- a. The applicant or family member dies;
- b. The applicant or family member suffers a serious physical or psychological illness or condition;
- c. The applicant is discharged 'without fault'; or
- d. The applicant resigns with 'just cause'.

2. A licensee shall not charge more than 30% of the scheduled fee to an applicant who fails to report to work without good reason or voluntarily terminates employment without just cause within 30 days of starting employment.

E. For purposes of computing a fee, termination "for cause" or "with fault" means a lawful or legal termination "for cause" or "with fault" under the laws of this State which can include termination for the following reasons:

1. Unexcused absence from work;
2. Intentional violation of employer work rules; and
3. Incapacitation or inability to perform work duties due to alcohol, drugs, or illegal substances or agents.

F. For purposes of computing a fee, an applicant has "just cause" for voluntarily terminating employment when the conditions of employment were either misrepresented or withheld from the applicant and those conditions, if known, would have caused the applicant to have reasonably refused employment.

G. Refund of a fee.

1. A licensee shall immediately refund to an applicant the entire fee paid by the applicant if following a bona fide job order the applicant is not permitted to, or is unable to start work, as a result of justifiable circumstances as defined in R20-5-323(A)(2).
2. A licensee shall immediately refund to an applicant the entire fee paid by the applicant if the licensee fails to satisfactorily provide or deliver the services or products agreed upon in the contract between the licensee and applicant.

R20-5-324. Fee Disputes

A. Complaint alleging refund dispute.

1. An applicant alleging that a licensee has failed to refund a fee that the applicant is entitled to receive may file a written notarized complaint with the Department. The written Complaint shall be filed within 90 days of demanding a refund from the licensee. The applicant shall make the written Complaint under oath and include the following information:
 - a. The name and address of the applicant;
 - b. The name and address of the licensee against whom the complaint is filed;
 - c. The factual allegations of the applicant along with any supporting documentation;
 - d. The relief requested by the applicant; and
 - e. All steps taken to informally resolve the dispute between the applicant and licensee.

2. The Department shall serve the licensee a copy of the Complaint by certified mail within 5 days of receipt of the Complaint.

B. Answer.

1. A licensee shall respond to a complaint filed against it by filing an answer with the Department within 10 days after the complaint is mailed.
2. The licensee shall attach to the licensee's answer copies of all receipts, agreements, or contracts relevant to the dispute.

3. The Department shall serve the applicant a copy of the licensee's answer within 10 days of receipt of the answer.

C. Investigation and determination by Department.

1. The Department shall investigate the allegations contained in a complaint and answer to determine whether a fee charged by the licensee complies with A.R.S. §23-521 et seq. and this Article. At the request of the parties or on its own motion, the Department may schedule an informal meeting between the applicant, licensee and director of the Department. The Department shall convene the informal meeting for the purpose of obtaining information to assist the Department in its investigation of the refund dispute.
2. Within 90 days after receipt of the answer, or the complaint if no answer is filed, the Department shall issue written findings and an order setting forth its determination of the refund dispute.
3. The Department shall serve a copy of its findings and order upon the applicant and licensee by mail at the last known address of the applicant and licensee.
4. The Department shall deem its findings and order final unless within 30 days from the date the findings and order is served, the applicant or licensee, or an authorized representative of the applicant or licensee, requests a hearing before the Commission.

D. Commission Hearing and Decision.

1. Hearing rights and procedures shall be governed by R20-5-312.
2. An applicant shall have the burden to establish that the applicant is entitled to a refund.
3. Based on the evidence presented at hearing, the Commission shall determine whether the fee charged by the licensee complies with the requirements of A.R.S. §23-521 et seq. and this Article entitling the applicant to a refund of the fee. The Commission shall issue written findings and an order setting forth its determination. The Commission decision is final unless a party requests review within 30 days from the date the decision is issued.
4. A party may request review of a Commission decision issued under this subsection by filing with the Commission a written request for review no later than 30 days after the written decision is mailed to the parties. The request for review shall be based upon one or more of the grounds set forth in R20-5-314 (B) that have materially affected the rights of a party. The request for review shall state the specific facts and laws in support of the request and shall specify the relief sought by the request.
5. The Commission shall deem its decision upon review final unless an applicant or licensee seeks review as required by A.R.S. §23-532(C).

R20-5-325. Determining Right of Referral and Placement

As between 2 licensees, the licensee entitled to a fee is the licensee that first completes a bona fide referral. However, if after the expiration of 6 months from the date of a referral by a licensee to an employer, no active interest or consideration is being given the applicant by the employer through the original referral, and a second licensee, who has a bona fide job order from the employer, refers the same applicant to the same employer and the applicant secures employment as a result of the second referral, then the second licensee is entitled to the fee.

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R-20-5-326. Advertising

In addition to the provisions of A.R.S. §23-534, the Department shall deem advertising false, misleading, or misrepresentative if the advertisement fails to conform to the following requirements:

1. An advertisement shall carry the name under which the agency is licensed to do business and shall state that the business is an applicant paid service or includes an applicant paid service;
2. If an advertisement is for a specific position, it shall be based upon an actual bona fide job order with the licensee and available at the time the advertisement is printed;
3. An advertisement shall not use a post office box number, a press box number, an associate name, an employer or counselor name, a telephone number only, or any other "blind" address;
4. An advertisement shall be canceled when a position is known to be filled or when knowledge is available that the position is not available;
5. An advertisement for a single job order shall not be duplicated in the same newspaper or news media. Employment positions shall not be advertised on the same day under two or more different job descriptions;
6. A position shall not be advertised at maximum pay only. A position may be advertised at a range from minimum to maximum, or by the words "to a maximum or \$" or "to \$". The word "open" or the symbol "\$\$\$" may not be used as a substitute for the salary of any position or positions in an advertisement;
7. An advertised position that requires or may require travel 50 miles beyond the city in which the newspaper or medium is published shall state that the position is not local;
8. A job title shall appear in an advertisement and shall be reasonably descriptive in accordance with the type of work to be performed;
9. An advertisement for a position within the agency itself shall indicate the agency is the employer;
10. An advertisement shall not state "guarantees a job", "guaranteed results," or words of similar import;
11. If the advertisement is a display or promotional advertisement and does not list a particular position, it shall carry the licensed name of the licensed employment agency;
12. An advertisement shall not state or imply that the licensed employment agency has access to an 'unpublished job market' or 'hidden job market'; and
13. An advertisement for a career counseling service shall not state or imply the following:
 - a. The existence of specific or general job openings;
 - b. Special contacts;
 - c. The success performance of clients in percentage terms;

- d. Prospective increase in income as a result of utilizing the career counseling service;
- e. The number of interviews or job offers likely to be obtained as a result of utilizing the career counseling service; and
- f. The time within which it is likely that a new position will be found.

R20-5-327. Labor Contractors

A labor contractor is not considered a private employment agent provided the labor contractor does not charge a fee to the worker who is contracted to the labor contractor's customer or client and meets the definition of a labor contractor under this Article.

R20-5-328. Talent and Modeling Agencies

A. All talent and modeling agencies meeting the definition of an employment agent in A.R.S. §23-521(A) are subject to the provisions of A.R.S. §23-521 et seq. and this Article, except that the Department shall not consider the following activities as conducting the business of a talent agent in this State if no fees are charged to applicants:

1. The production of theatrical or musical arts or stage shows consisting of responsibility for an entire program;
2. Acting as exclusive business or personal manager for a talent and not referring talent and models to jobs; and
3. Casting services.

B. A talent and modeling agency shall investigate any company who offers employment to a talent or model to reasonably ensure that the company has not defaulted in the payment of salaries, fees, or other compensation to talents and models the company has employed.

R20-5-329. Employment Agencies Acting without a License

A. The Department shall investigate the nature and scope of the business of any person, firm, corporation, or association when the person, firm, corporation, or association appears to meet the definition of an "employment agent" in A.R.S. §23-521, but is operating without an employment agent license.

B. The Department's investigation may include requesting written reports from the person, firm, corporation, or association in question, inspecting relevant records, and securing statements or depositions from witnesses.

C. If after a thorough investigation, the Department determines that the person, firm, corporation, or association is conducting the business of an employment agent in Arizona without an employment agent license, the Department shall submit the entire record of its investigation, along with the Department's findings, to the appropriate law enforcement agency for criminal prosecution in accordance with the provisions of A.R.S. §23-536.