

OCCUPATIONS CODE

TITLE 15. OCCUPATIONS RELATED TO EMPLOYMENT

CHAPTER 2501. PERSONNEL SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2501.001. DEFINITIONS. In this chapter:

(1) "Applicant" means a person who:

(A) engages the services of a personnel service to secure employment; or

(B) is placed with an employer by a personnel service.

(2) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(1), eff. May 20, 2011.

(3) "Counselor" means a person who:

(A) interviews and refers an applicant to a prospective employer; or

(B) solicits job orders from an employer.

(3-a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(1), eff. May 20, 2011.

(4) "Employer" means a person who employs or seeks to employ an employee.

(4-a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(1), eff. May 20, 2011.

(5) "Fee" means anything of value, including valuable consideration or a service or the promise of valuable consideration or a service, directly or indirectly received by a personnel service as payment from a person seeking employment.

(6) "Job order" means a verbal or written notice of a job opening from an employer.

(7) "Owner" means a person who possesses a proprietary interest in a personnel service.

(8) "Person" means an individual, partnership, association, corporation, legal representative, trustee in bankruptcy, or receiver.

(9) "Personnel service" means a person who, regardless of whether for a fee, directly or indirectly offers or attempts to

obtain permanent employment for an applicant or obtains or attempts to obtain a permanent employee for an employer. The term does not include a newspaper of general circulation or other publication that primarily communicates information, other than information relating to employment positions, and that does not claim to adapt the information provided to the needs or desires of an individual applicant. The term includes a person who offers the facilities of or advertises as:

- (A) an executive search or consulting service;
- (B) an out-placement service;
- (C) an overseas placement service;
- (D) a job listing service;
- (E) a personnel consulting service; or
- (F) a resume service that provides job market

investigation, research, or evaluation.

(10) "Service file" means a job order, resume, application, workpaper, or other record containing information relating to:

- (A) an applicant;
- (B) an employer;
- (C) an employment position; or
- (D) the operation of a personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Amended by Acts 2003, 78th Leg., ch. 816, Sec. 11.001, eff. Sept. 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 102 (S.B. [1168](#)), Sec. 2(1), eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 565 (H.B. [3167](#)), Sec. 2.02(1), eff. September 1, 2011.

Sec. 2501.002. EXCEPTION. This chapter does not apply to:

- (1) a personnel service operated by the United States, this state, or a municipality of this state;
- (2) a personnel service operated by a person who does not assess a fee if the personnel service is operated in conjunction with the person's own business exclusively to employ help for that

business;

(3) a labor union; or

(4) a professional counselor licensed under Chapter 503.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

#### SUBCHAPTER C. PROHIBITED PRACTICES

Sec. 2501.101. PROHIBITED PRACTICES. (a) An owner, operator, counselor, agent, or employee of a personnel service may not:

(1) share or attempt to share a fee paid by a person seeking employment or an employer with an employer or an agent or employee of an employer or another person provided services by the personnel service;

(2) make or cause to be made a false promise, misrepresentation, or misleading statement or give or cause to be given misleading information to an applicant;

(3) refer an applicant to an employer unless the personnel service has a job order for the referral;

(4) advertise a position unless the personnel service has a job order verifiable by the employer;

(5) procure or attempt to procure the discharge of a person from the person's current employment;

(6) induce, solicit, or attempt to induce or solicit an employee to terminate current employment in order to obtain new employment if the current employment was obtained through that personnel service or a personnel service that has a common ownership with that personnel service unless the employee initiates the new contact;

(7) deliver, disclose, distribute, or otherwise communicate to or receive from a person a service file or information contained in a service file, except as authorized by the personnel service that owns the file;

(8) advertise in any medium, including a newspaper, trade publication, billboard, radio, television, card, printed notice, circular, contract, letterhead, or any other material made

for public distribution, except an envelope, without clearly stating that the advertisement is by a firm providing a private personnel service;

(9) refer an applicant to a place where the personnel service has knowledge of the existence of a strike or lockout unless the personnel service informs the applicant in writing of the strike or lockout before the referral is made; or

(10) refer an applicant to employment harmful to the applicant's health or morals if the personnel service has knowledge of the harmful condition.

(b) An employer or a person seeking employment may not:

(1) make a false statement or conceal any material fact to obtain an employee or employment by or through a personnel service; or

(2) share or attempt to share with a person subject to this chapter a fee paid or another payment made for the services of a personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.102. IMPOSITION OF FEE PROHIBITED BEFORE EMPLOYMENT OFFER ACCEPTED. Notwithstanding any refund policy, an owner, operator, counselor, agent, or employee of a personnel service may not impose a fee on an applicant until the applicant accepts an offer of employment resulting from an employment referral made by the personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.103. CHARGING OF FEE IN EXCESS OF CERTAIN AMOUNT PROHIBITED IF EMPLOYMENT TERMINATED. An owner, operator, counselor, agent, or employee of a personnel service may not charge an applicant a fee that exceeds 20 percent of the applicant's gross wages if:

(1) the employment accepted by the applicant as a result of a referral by the personnel service lasts less than 30 days; and

(2) the applicant terminates the employment for good cause.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

#### SUBCHAPTER E. CIVIL LIABILITY

Sec. 2501.201. LIABILITY FOR DAMAGES. (a) In this section, "knowingly" means actual awareness of the act or practice that is the alleged violation. Actual awareness may be inferred if any objective manifestation indicates that the person acted with actual awareness.

(b) A person who violates this chapter is liable to a person adversely affected by the violation for:

- (1) actual damages; or
- (2) if the person adversely affected establishes that the violation was committed knowingly, three times the amount of actual damages.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 102, Sec. 2(2), eff. May 20, 2011.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 102 (S.B. 1168), Sec. 2(2), eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 565 (H.B. 3167), Sec. 2.02(2), eff. September 1, 2011.

Sec. 2501.202. INJUNCTION AND OTHER REMEDIES. A plaintiff in an action filed under Section 2501.201 may obtain:

(1) an order enjoining the defendant from violating this chapter;

(2) any order necessary to restore to the plaintiff any property acquired by the defendant in violation of this chapter; or

(3) other relief the court considers proper, including:

(A) the appointment of a receiver if the judgment against the defendant is not satisfied within three months after the date of the final judgment; or

(B) an order enjoining the defendant from acting

as a personnel service.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 102 (S.B. 1168), Sec. 1, eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 565 (H.B. 3167), Sec. 2.01, eff. September 1, 2011.

Sec. 2501.203. AWARD OF ATTORNEY'S FEES. (a) A plaintiff who prevails in an action filed under Section 2501.201 is entitled to receive court costs and reasonable and necessary attorney's fees.

(b) On finding that an action filed under Section 2501.201 is groundless and was brought in bad faith or for the purpose of harassment, the court may award court costs and reasonable attorney's fees to the defendant.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.204. DECEPTIVE TRADE PRACTICE. A violation of this chapter is a false, misleading, or deceptive act or practice within the meaning of Section 17.46, Business & Commerce Code, and any public or private right or remedy authorized by Subchapter E, Chapter 17, Business & Commerce Code, may be used to enforce this chapter.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

#### SUBCHAPTER F. PENALTIES

Sec. 2501.251. CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly violates this chapter.

(b) An offense under this section is a Class A misdemeanor.  
Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.252. TRADE SECRET. A service file is a trade secret for purposes of Section 31.05, Penal Code.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.

Sec. 2501.254. EFFECT ON OTHER REMEDIES AND ENFORCEMENT POWERS. This chapter does not affect a public or private remedy or enforcement power available under other law.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 6, eff. June 1, 2003.