

34: 8-24 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 34:8-24 et al; 56:8-1.1 (Temporary help service companies--exempt from licensing under Private Employment Agency Act)

LAWS 1981 CHAPTER 1

Bill No. A870

Sponsor(s) Jackman

Date Introduced Jan. 29, 1980

Committee: Assembly Commerce, Industry and Professions

Senate Labor, Industry and Professions

Amended during passage Yes ~~No~~ Amendments during passage denoted by asterisks

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Following statements are attached if available:

Sponsor statement Yes ~~No~~

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Fiscal Note ~~Yes~~ No

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Reports ~~Yes~~ No

Hearings ~~Yes~~ No

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ASSEMBLY, No. 870

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1980

By Assemblyman JACKMAN

Referred to Committee on Commerce, Industry and Professions

AN ACT to amend "An act to regulate and license employment agencies and certain employees of such agencies, defining the same, fixing the fees for such licenses and imposing penalties for violations, and supplementing Title 34 of the Revised Statutes," approved July 19, 1951 (P. L. 1951, c. 337) and supplementing P. L. 1960, c. 39.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 1 of P. L. 1951, c. 337 (C. 34:8-24) is amended to read
2 as follows:

3 1. As used in this act:

4 "Employment agency" means and includes the business of
5 procuring or offering to procure help or employment, or the giving
6 of information as to where help or employment may be procured,
7 whether the business is conducted in a building or on the street or
8 elsewhere; or the business of keeping an employment bureau,
9 nurses' registry, or agency for procuring engagements for vaude-
10 ville or theatrical performers, ***[***or the business of providing domes-*
11 *tic personnel (other than home health personnel), or the business*
12 *of providing baby sitters, or the business of providing crew chiefs*
13 *in agricultural operations.***]*** or other agency or office for procur-
14 ing work or employment for persons, where a fee or privilege is
15 exacted, charged or received directly or indirectly for procuring
16 or assisting or promising to procure employment, work, engage-
17 ment or a situation of any kind, or for procuring or providing help
18 or promising to provide help for any person, whether such fee is
19 collected from the applicant for employment or the applicant for
20 help, or whether the application for help or employment is made
21 directly or indirectly by either the prospective employer or the
22 prospective employee or by any person acting to secure either help

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

23 or employment for the prospective employer or the prospective
24 employee. "*Employment agency*" shall not include any temporary
25 help service firms.

26 "Fee" means and includes any payment of money, or promises
27 to pay money, or the excess of money received by a person fur-
28 nishing employment or employees over what he has paid for
29 transportation, transfer or baggage or lodging for an applicant
30 for employment. It shall also mean and include the difference
31 between the amount of money received by any person who either
32 furnishes employees or performers for any entertainment, exhibi-
33 tion or performance, or who furnishes baby sitters for any oc-
34 casion, and the amount paid by such person or persons to the
35 employees, performers or baby sitters.

36 "Privilege" means and includes the furnishing of food, supplies,
37 tools or shelter to contract laborers, commonly known as com-
38 missary privileges. The furnishing of food, supplies, tools or
39 shelter to laborers, if performed or paid for within this State, both
40 in connection with the promise or offer to provide help or employ-
41 ment regardless of where such offer is made or where the help is
42 obtained, shall be considered proof of violation of this act.

43 ["Commissioner" means the Commissioner of Labor and Indus-
44 try of this State or his duly authorized representative.]

45 "*Attorney General*" means the Attorney General of this State
46 or his duly authorized representative.

47 "Contract laborers" means unskilled or skilled workers, of
48 either sex, furnished either directly or indirectly by any person,
49 engaged directly or indirectly in the business of furnishing em-
50 ployees, to employers by whom they are to be employed in groups
51 of five or more persons.

52 "Employment agency owner's license" means a license autho-
53 rizing the person to whom it is issued to own an employment agency
54 and to have such employment agency operated by a person or per-
55 sons duly authorized to perform the functions for which the agency
56 is licensed.

57 "Employment agency operator's license" means a license issued
58 to an individual person who is the holder of an employment agency
59 owner's license or to an employee or agent of the holder of an
60 employment agency owner's license. When held by the employee
61 or agent of the holder of an employment agency owner's license
62 such employment agency operator's license shall authorize the
63 holder to perform such functions as he may be duly authorized and
64 empowered by his employer to perform and for the performance
65 of which an employment agency operator's license is required. No

66 person, other than the holder of an employment agency operator's
67 license, shall furnish help or employment, or furnish information
68 as to where help or employment may be obtained, or manage,
69 operate or carry on the business of an employment agency.

70 "Representative" means any individual person holding an em-
71 ployment agency operator's license duly authorized and empowered
72 by the owner of the employment agency owner's license, by whom
73 he is employed, to solicit business and otherwise act as the duly
74 authorized representative of his employer to the extent of such
75 authorization and subject to the provisions of this act.

76 "Employee" means an applicant for a job, or an engagement to
77 work, who is furnished to an employer, or prospective employer,
78 by an employment agency. This definition shall not apply to em-
79 ployees of the employment agency.

80 "Employer" means an applicant for help for whom an employee
81 is to be supplied by an employment agency.

82 "Rules and regulations" means such rules and regulations as
83 shall have been promulgated by the [commissioner] *Attorney*
84 *General* and are not inconsistent with the provisions of this act.

85 "Vaudeville or theatrical performers" means individual persons
86 or groups of persons whose services are available for hire for the
87 purposes of furnishing entertainment or amusement, whether the
88 services are rendered by individuals performing alone or in groups
89 commonly described as entertainment acts.

90 "Agency for procuring engagements for theatrical or vaudeville
91 performers" means any person engaged in the business of procur-
92 ing employment for vaudeville or theatrical employees for any
93 employer other than himself.

94 "Baby sitters" means and includes any individual person under
95 21 years of age, of either sex, other than a registered nurse or a
96 licensed nurse, entrusted temporarily with the care of children
97 during the absence of their parents, guardians, or persons standing
98 in loco parentis to them. This definition shall not include persons
99 regularly employed by agencies, or institutions operated by or
100 under the control or supervision of this State, or any of its political
101 subdivisions, nor any nurseries operated for the care of children
102 when such nurseries are similarly controlled or supervised.

103 "*Temporary help service firm*" means and includes any person,
104 firm or entity *[(other than those specifically included in the defi-
105 tion of "employment agency")]* who operates a business which
106 consists of employing individuals directly for the purpose of as-
107 signing his employees to assist his customers in the handling of

108 *his customers' *temporary,* excess or special work loads, and who,*
109 *in addition to the payment of wages or salaries to his employees,*
110 *pays Federal social security taxes and State and Federal unem-*
111 *ployment insurance, carries workmen's compensation insurance as*
112 *required by State law, and sustains responsibility for the actions of*
113 *his employees while rendering services to his customers.*

1 2. Section 2 of P. L. 1951, c. 337 (C. 34:8-25) is amended to
2 read as follows:

3 2. The provisions of this act shall not apply to:

4 (1) A business or persons engaged therein which is confined to
5 procuring employment in schools or institutions of learning recog-
6 nized and approved as such by the Department of Education of
7 this State, or by the duly established authority of the State in
8 which the employment is procured when the employment procured
9 is restricted to positions for teachers who are recognized and
10 approved as such by the said Department of Education under its
11 authority to qualify and certify teachers;

12 (2) Departments or bureaus maintained by persons for the
13 purpose of securing help for themselves where no fee is charged
14 the applicant for employment, or to any State, Federal, or municipi-
15 pal or charitable agency where no fee is charged. The exemption
16 from the provisions of this act of departments or bureaus main-
17 tained by persons for the purpose of securing help for themselves
18 shall not be construed to exempt associations or organizations of
19 employers from the requirement to procure such license or licenses
20 as are otherwise required under this act;

21 (3) The procuring of employment by any labor union for any of
22 its members in any job or jobs coming under the jurisdiction of the
23 union; provided, that no fee is charged any employee for being
24 furnished employment or information where employment may be
25 procured;

26 (4) Any nurses' registry conducted by any association of regis-
27 tered nurses, whose membership is not less than ten registered
28 nurses, duly incorporated as a nonprofit organization under the
29 laws of New Jersey, and operated under the supervision of a
30 registered nurse legally authorized to practice as such in the State
31 of New Jersey; provided, that no such nurses' registry shall furnish
32 help or employment in any occupation other than as a registered
33 nurse, a practical nurse, licensed by the State of New Jersey, or
34 persons other than baby sitters approved by the registered nurse
35 in charge of such nurses' registry and sent by the agency to an
36 employer to assist nonprofessionally in the care of the sick or
37 ailing; or

38 (5) Any association of farmers duly incorporated on a nonprofit
39 basis, under the provisions of the law of New Jersey, and certified
40 to the [commissioner] *Attorney General* by the Secretary of
41 Agriculture of New Jersey as being an association of bona fide
42 farmers of New Jersey; providing, that such association of farmers
43 does not furnish help to any person or persons other than members
44 of their association; and further provided, that no fee is charged
45 any employee for being furnished employment or information
46 where employment may be procured. The provisions of this act
47 shall not apply to any person who furnishes for or to farmers,
48 workers to be employed on a seasonal basis in the occupation of
49 field workers or harvest hands and by whom no fee is charged
50 either directly or indirectly to any worker, or to whom any fee is
51 paid either directly or indirectly by any worker for the furnishing
52 or agreeing to furnish either help for farmers or employment for
53 workers provided that the wages of such workers are paid directly
54 to the workers by the farmers by whom they are employed;
55 provided, however, the exemptions established in this paragraph
56 shall not apply to any person who induces or attempts to induce a
57 person working under contract with his employer to leave the
58 employment in which he is working under said contract until such
59 time as said contract is completed or the employee is no longer
60 responsible for its completion.

61 (6) *Any temporary help service firm provided that no fee or*
62 *liquidated charge is charged any employee employed by the tempo-*
63 *rary help service firm or in connection with such employment. In*
64 *addition, no temporary help service firm shall by contract with any*
65 *of its temporary employees, prevent or inhibit any of such*
66 *employees from becoming employed by any other person, firm or*
67 *entity; further provided, that no temporary help service firm shall*
68 *knowingly send its employees to, or knowingly continue to render*
69 *services to, any plant or office where a strike or lockout is in*
70 *progress for the purpose of replacing striking or locked out*
71 *employees. Any director, officer or partner conducting a temporary*
72 *help service firm which knowingly sends its employees to, or*
73 *knowingly continues to render services to, a plant or office where*
74 *a strike or lockout is in progress for the purpose of replacing*
75 *striking or locked out employees, or directly or indirectly counsels,*
76 *aids or abets such an action shall be liable to a penalty of \$1,000.00*
77 *upon each such occurrence. Such penalty shall be sued for and*
78 *received by and in the name of the Attorney General of New Jersey*
79 *and shall be collected and enforced by summary proceedings pur-*
80 *suant to "the penalty enforcement law" (N. J. S. 2A:58-1 et seq.).*

81 *This exclusion shall apply to temporary help service firms oper-*
82 *ated by any person, firm or entity who also operates an employment*
83 *agency as long as the businesses are not commingled and are oper-*
84 *ated separately as prescribed by rules and regulations promulgated*
85 *by the Attorney General.*

1 3. Section 3 of P. L. 1951, c. 337 (C. 34:8-26) is amended to read
2 as follows:

3 3. No person shall either directly or indirectly open, conduct or
4 maintain an employment agency or perform any of the functions
5 of an employment agency without first obtaining such license or
6 licenses as is or are required by the provisions of this act. No
7 license shall authorize the furnishing of help or employment or the
8 furnishing of information where help or employment may be
9 procured in the capacity of baby sitters. No employee of a licensee
10 shall be exempt from the requirement of securing a license for the
11 performance of any act for which a license is required by this act.
12 No license shall be of avail to any person other than the individual
13 person or persons holding such license except that a corporation
14 may be the holder of an employment agency owner's license. No
15 license shall be of avail for use at any place other than at the place
16 designated in such license. No license, issued to an employee of any
17 employment agency shall authorize his employment by any other
18 employment agency. No employment agency owner's license shall
19 be transferred or amended unless a consent thereto, in writing, is
20 given by the **[commissioner]** *Attorney General*. No employment
21 agency owner's license shall be transferred by the licensee to any
22 other person except upon the written consent of the **[commissioner]**
23 *Attorney General*, and the payment of the fee prescribed by this act.

24 Upon the termination of the employment of the holder of an
25 employment agency operator's license the holder of the employment
26 agency owner's license by whom the holder of said employment
27 agency operator's license has been employed shall promptly notify
28 the **[commissioner]** *Attorney General* of the termination of the
29 employment. The employment agency operator's license shall
30 thereupon be canceled and the holder thereof entitled to the issu-
31 ance of a new license for the unexpired term of the old license
32 without payment of additional fee upon the written request of
33 such holder thereof and the holder of the employment agency
34 owner's license who is to be named in such new license as the new
35 employer; provided, however, that the **[commissioner]** *Attorney*
36 *General* may refuse to issue such new license for any good cause
37 shown within the provisions of this act.

38 Any unlicensed person or any officer or agent of any unlicensed
 39 corporation who shall either directly or indirectly open, conduct or
 40 maintain an employment agency, or any person who shall know-
 41 ingly permit any unlicensed employee or agent to perform any act,
 42 the performer of which is required to be licensed, shall be guilty
 43 of a misdemeanor and shall be punishable by a fine of not less
 44 than \$50.00 nor more than \$250.00 or by imprisonment for a period
 45 of not more than 1 year, or both.

46 Any person performing any act, the performance of which is
 47 within the definition of employment agency operator's license,
 48 without holding such a license, shall be guilty of a misdemeanor
 49 and shall be punishable by a fine of not less than \$50.00 nor more
 50 than \$250.00, or by imprisonment for a period of not more than
 51 1 year, or both.

1 4. Section 4 of P. L. 1951, c. 337 (C. 34:8-27) is amended to read
 2 as follows:

3 4. Applications for licenses required by this act shall be made, in
 4 writing to the **[commissioner]** *Attorney General*, in such form as
 5 shall be prescribed by the rules and regulations promulgated by
 6 the **[commissioner]** *Attorney General*.

7 Each application for an employment agency owner's license shall
 8 state the complete address, including street and street number of
 9 the building and place where the agency is to be conducted and
 10 shall enumerate the type or class of occupations in which the
 11 applicant intends to furnish help or employment.

12 Each application for an employment agency operator's license
 13 shall state the name and address of the applicant, the name of the
 14 holder of an employment agency owner's license, by whom the
 15 applicant expects to be employed, and such other information,
 16 concerning the applicant and his education and experience, as may
 17 be required by the ***[commissioner]*** **Attorney General** to assist
 18 him in determining the applicant's responsibility and qualifications
 19 in respect to the type of license applied for. Any such application
 20 shall also enumerate the type or class of occupations in which the
 21 applicant intends to deal in the furnishing of help or employment.
 22 No employment agency operator's license shall be issued until the
 23 holder of the employment agency owner's license to be named
 24 therein shall confirm to the **[commissioner]** *Attorney General* in
 25 writing the agreement of employment of the holder of the employ-
 26 ment agency operator's license by the holder of the employment
 27 agency owner's license.

28 The **[commissioner]** *Attorney General* shall act upon any appli-
 29 cation for a license within 30 days after receiving the same, but

30 shall not grant any license until the application therefor shall have
31 been on file for at least 1 week and notice of the application and
32 opportunity to be heard in the case of the application for an
33 employment agency owner's license shall have been given to every
34 holder of an employment agency owner's license in the county
35 where the proposed agency is to be located, and in the case of an
36 application for an employment agency operator's license similar
37 notice and opportunity shall have been given to every holder of an
38 employment agency owner's license whose agency is located in
39 the same county with the agency by which the applicant is to be
40 employed; provided, that the foregoing provisions concerning
41 notice and opportunity to be heard shall not apply in the case of
42 the issuance of a new employment agency operator's license to the
43 holder of such a license as provided for in the second paragraph
44 of section 3 of this act. The mailing of the notices herein required
45 by first-class mail 1 week prior to the date on which the [com-
46 missioner] *Attorney General* acts on the application shall consti-
47 tute the giving of the notice required by this paragraph. For the
48 purpose of allowing an applicant to submit additional information,
49 the [commissioner] *Attorney General* may extend the maximum
50 time for acting upon an application from 30 to 60 days.

1 5. Section 5 of P. L. 1951, c. 337 (C. 34:8-28) is amended to
2 read as follows:

3 5. Every applicant for an employment agency operator's license
4 under this act shall, by means of such written examination as may
5 be required by the rules and regulations promulgated by the [com-
6 missioner] *Attorney General*, reasonably satisfy the [commis-
7 sioner] *Attorney General* that the applicant has sufficient
8 knowledge of the provisions of this act, the rules and regulations
9 promulgated by the [commissioner] *Attorney General*, and of the
10 labor laws of this State to reasonably insure that any acts per-
11 formed by him as licensee will be in compliance with the applicable
12 laws and regulations, and further that by means of examination
13 he shall reasonably satisfy the [commissioner] *Attorney General*
14 that he has sufficient knowledge of and experience in relation to
15 the fields of employment specified in his application as will insure
16 his ability to render adequate and efficient service to persons seek-
17 ing help or employment; however, for the purpose of enabling
18 persons to secure experience and knowledge necessary to qualify
19 them as an operator, the [commissioner] *Attorney General* may
20 waive such of the requirements of this paragraph as he deems
21 proper and issue a provisional temporary license authorizing the
22 holder to perform functions requiring a license, when acting under

23 the direct supervision of a duly qualified licensed operator; pro-
24 vided, that no such temporary license shall remain in effect for
25 more than 1 year

26 Every applicant for an employment agency owner's license shall
27 furnish such evidence as may be required by the [commissioner]
28 *Attorney General* to satisfy him that the applicant, or in the case
29 of a corporate applicant, its officers and directors, is or are of
30 good moral character. Such evidence shall include the affidavits
31 of at least three reputable citizens of this State who have known the
32 applicant or said officers or directors for a period of at least 5
33 years. Every applicant, and every officer and director of a corporate
34 applicant, shall be citizens of the United States and shall furnish
35 proof thereof. Every applicant shall furnish such additional in-
36 formation, concerning himself, or its officers and directors, as may
37 be required by the rules and regulations promulgated by the [com-
38 missioner] *Attorney General* for the purpose of assisting him in
39 investigating the character and responsibility of the applicant or
40 its officers and directors.

41 An applicant for an employment agency operator's license shall
42 furnish information which will reasonably satisfy the [commis-
43 sioner] *Attorney General* that the applicant has sufficient knowl-
44 edge of opportunities for employment in this State and of the
45 essential qualifications of employees in the occupations in which
46 he intends to furnish help or employment.

47 Any such applicant for an employment agency operator's license
48 shall be:

- 49 (1) A citizen of the United States of America, and
- 50 (2) Of good moral character, attested to by affidavits of not less
51 than two reputable citizens of the State, whose acquaintance with
52 the applicant shall have been for at least 1 year.

53 Any applicant for an employment agency operator's license
54 shall with his application submit to the [commissioner] *Attorney*
55 *General*, in writing, information reasonably establishing that the
56 applicant has had sufficient formal education or the equivalent
57 thereof to enable him to properly keep the records and do the
58 clerical work required by this act.

59 If the employment agency operator's license is restricted to the
60 furnishing of help or employment in domestic service, the said
61 educational and training qualifications of the applicant shall not
62 be required but the [commissioner] *Attorney General* shall be
63 satisfied that the applicant has had sufficient training or experience
64 to furnish or place domestic help.

65 The **【commissioner】** *Attorney General* shall provide for the
 66 issuance of, and shall prescribe the form for, the licenses which
 67 he is authorized to issue pursuant to this act. The **【commissioner】**
 68 *Attorney General*, by rule promulgated by him, may require licenses
 69 to be posted and registration cards to be carried in such cases as
 70 he shall determine. All licenses, subject to revocation as provided
 71 in this act, shall expire on the first day of January next after their
 72 issuance.

1 6. Section 6 of P. L. 1951, c. 337 (C. 34:8-29) is amended to
 2 read as follows:

3 6. An employment agency shall not be conducted in any of the
 4 following places:

- 5 (1) Rooms or quarters used for living purposes;
- 6 (2) Boarding or lodging houses, rooms or quarters;
- 7 (3) Sleeping rooms or quarters.

8 Where the application is for a license to operate an employment
 9 agency in a place used for the conduct of another business, the
 10 **【commissioner】** *Attorney General* may refuse to grant such license
 11 if, in his opinion, such refusal would be in the public interest. *Should*
 12 *the other business be that of operating a temporary help service*
 13 *firm, the Attorney General may refuse to grant such license if the*
 14 *businesses are not operated separately as prescribed by the rules*
 15 *and regulations promulgated by the Attorney General.*

1 7. Section 7 of P. L. 1951, c. 337 (C. 34:8-30) is amended to
 2 read as follows:

3 7. Before an employment agency owner's license is issued, the
 4 applicant shall deposit with the **【commissioner】** *Attorney General*
 5 a bond in the penal sum of \$1,000.00, with two or more sureties,
 6 or a duly authorized surety company as surety, to be approved
 7 by the **【commissioner】** *Attorney General*.

8 The bond shall be payable to the State and shall be conditioned
 9 that the person applying for the license will comply with this act
 10 and will pay all damages occasioned to any person by reason of any
 11 misstatement, misrepresentation, fraud or deceit, or any unlawful
 12 act or omission of any licensed person, his agents, or employees,
 13 while acting within the scope of their employment, made, committed
 14 or omitted in the business conducted under the license, or caused
 15 by any violation of this act in carrying on the business for which
 16 the license is granted. In case of a breach of the condition of any
 17 bond, application may be made to the **【commissioner】** *Attorney*
 18 *General* by the person injured by the breach for leave to sue upon
 19 the bond, which leave shall be granted by the **【commissioner】**
 20 *Attorney General* if it be proven to his satisfaction that the con-

21 dition of the bond has been breached and the party applying has
22 been injured thereby. The person obtaining leave to sue shall be
23 furnished with a certified copy of the bond and institute suit on
24 the bond in his own name for the recovery of damages sustained
25 by such breach.

26 If at any time, in the opinion of the [commissioner] *Attorney*
27 *General*, the sureties on any such bond, or any of them, shall become
28 irresponsible, the person holding such license shall, upon notice
29 from the [commissioner] *Attorney General*, give a new bond, sub-
30 ject to the provisions of this section. The failure to give a new
31 bond within 10 days after such notice, at the direction of the [com-
32 missioner] *Attorney General*, shall operate as revocation of such
33 license, and the license shall be thereupon returned to the [com-
34 missioner] *Attorney General*.

1 8. Section 9 of P. L. 1951, c. 337 (C. 34:8-32) is amended to read
2 as follows:

3 9. Every licensed employment agency shall:

4 (1) File with the [commissioner] *Attorney General* in form,
5 approved by him, a schedule of fees proposed to be charged for
6 any service rendered to employers seeking employees and to
7 persons seeking employment; and adhere thereto in charging for
8 such services. Before approving of said fee schedule the [commis-
9 sioner] *Attorney General* [must] *shall* be satisfied that same is
10 reasonably understandable by persons subject to its terms.

11 (2) Post such schedule of fees in a conspicuous manner in the
12 office of the agency using such blank forms as the [commissioner]
13 *Attorney General* shall provide for such purpose.

14 (3) Keep and make available to the [commissioner] *Attorney*
15 *General*, or his duly authorized representative, during regular
16 business hours, such records containing information pertinent to
17 applications for help or employment, help or employment procured
18 or furnished, advertising for help or employment, fees charged or
19 collected, and to matters incidental and relevant thereto as are
20 required by rules and regulations to enable the [commissioner]
21 *Attorney General* to determine the status of compliance with the
22 provisions of this act.

23 (4) Requires all applicants for work in private families, or for
24 positions of trust, to furnish the agency with names and addresses
25 of persons available as character references, and whenever pos-
26 sible communicate, orally or in writing, with at least one of the
27 persons given by the applicant as a character reference. If the
28 applicant has not furnished the names of any persons available as

29 character references, or if no favorable statement has been received
30 from such character references, the agency shall so advise the
31 prospective employer, to whom the applicant is referred. This
32 information shall be written upon the referral slip given by the
33 agency to the applicant for work to present to the prospective
34 employer. A written result of the investigation to determine the
35 character and responsibility of any applicant for help shall be
36 kept on file in the agency subject to examination by the [commis-
37 sioner] *Attorney General*. If the applicant for help voluntarily
38 waives, in writing, an investigation of references, the licensed
39 agency shall not be required to make such an investigation.

40 (5) Charge to an employee who is discharged without cause
41 within 1 week not more than the scheduled fee for temporary
42 employment or not more than 10% of the scheduled fee for
43 permanent employment whichever of the two is the lesser;
44 however, by mutual agreement between the agency and the
45 employee the agency may charge the full fee for the job from
46 which the employee has been discharged without cause and furnish
47 the employee another job for which no charge is to be made.

48 (6) Charge an applicant who fails to report for duty, after
49 accepting employment, not more than two-fifths of the scheduled
50 fee.

51 (7) Charge an applicant who leaves employment of his own
52 accord within the first week of employment not more than two-fifths
53 of the scheduled fee.

54 (8) Reimburse the applicant for transportation expenses if no
55 employment of the kind applied for exists at the place to which
56 the applicant is sent and the licensed agency did not have a bona fide
57 order, either oral or written, from the prospective employer.

58 (9) If an applicant shall not accept or obtain help or employ-
59 ment through an employment agency to whom he had paid a fee
60 or a part of a fee, the agency shall upon demand repay to the
61 applicant the full amount of any fee or part of a fee which has been
62 paid to the agency for such help or employment allowing 3 days'
63 time to determine the fact of failure to obtain help or employment.

64-65 (10) Give to every applicant for employment, from whom a fee
66 is received, a receipt in which shall be stated the name of the
67 applicant, the date and amount of fee, the purpose for which it was
68 paid, and to every applicant for help a receipt stating the name and
69 address of the applicant, the date and amount of the fee, and the
70 kind of help to be provided. Every such receipt shall have printed
71 on the back thereof a brief abstract descriptive of the provisions
72 of this act relating to such fees.

73 (11) Furnish each applicant for employment, who is sent to a
 74 prospective employer, with a card or similar paper containing the
 75 nature of the prospective employment, the names of the applicant
 76 and prospective employer, and the address of such employer. The
 77 said card or paper may be mailed to the applicant on the same
 78 day that the employee is sent to the prospective employer and a
 79 copy thereof to the prospective employer in lieu of furnishing the
 80 same to the applicant.

81 (12) Furnish to each applicant for employment who is sent to a
 82 prospective employer for an interview concerning the applicant's
 83 qualifications or future employment in a job for which no order has
 84 been given to the agency, a card or paper containing the names of
 85 the applicant and of the prospective employer, the address of the
 86 prospective employer and such other particulars as the agency may
 87 determine. In each such case, there shall be printed in bold-faced
 88 type on said card or paper the following:

89 "This card of introduction is given the bearer with the
 90 understanding that he is not obligated to this agency for any
 91 fee until such time as he may be employed as a result of the
 92 services rendered him by this agency and after the agency has
 93 received a bona fide order for help to fill the job which he
 94 has obtained."

95 (13) Post in the agency in such places as the **【commissioner】**
 96 *Attorney General* shall direct an abstract of this act and of the
 97 rules and regulations promulgated by the **【commissioner】** *Attorney*
 98 *General* in such form as he shall require. The **【commissioner】**
 99 *Attorney General* shall certify to the said abstracts.

1 9. Section 10 of P. L. 1951, c. 337 (C. 34:8-33) is amended to
 2 read as follows:

3 10. No employment agency shall:

4 (1) Conduct a lodging house for the unemployed unless it is
 5 separate and apart from the agency.

6 (2) Conduct its business, or any phase thereof, in any room or
 7 place where

8 (a) Person or persons sleep or conduct their household
 9 affairs, or

10 (b) Boarders or lodgers are kept.

11 (3) Charge or accept payment of any fees other than shown by
 12 its schedule of fees filed with the **【commissioner】** *Attorney General*
 13 and posted in the agency.

14 (4) Accept and receive any valuable thing or gift as or in lieu
 15 of a fee.

16 (5) Divide or offer to divide fees, directly or indirectly, with
17 prospective or actual employers or any agent, employee, or
18 representative of said employers.

19 (6) Accept payment of any fee or attempt to collect any fees for
20 any service rendered with relation to any specific help or employ-
21 ment which the applicant has not accepted or obtained through the
22 agency in cases where it is established that the applicant did not
23 accept or obtain such help or employment through the agency.

24 (7) Make any statement or in any way allege or indicate to any
25 applicant sent to seek employment at any place or by any prospec-
26 tive employer that work or employment is available at any such
27 place or by any such prospective employer unless the agency does
28 have a bona fide order for an employee to fill the job alleged or
29 indicated as being available.

30 (8) Send or cause to be sent any female to become a servant or
31 inmate of, or to enter, any place of bad repute, house of ill-fame
32 or assignation, or to any house or place of amusement kept for
33 immoral purposes, or to a place restored to for the purposes of
34 prostitution, or to a gambling house.

35 (9) Knowingly permit persons of bad character, prostitutes,
36 gamblers, intoxicated persons or procurers to frequent the agency.

37 (10) Accept any application for employment made by or on
38 behalf of any child under the age of 16 years, or place or assist
39 in placing any such child in any employment whatever or place
40 or assist in placing any minor under 18 years of age in any
41 unlawful occupation.

42 (11) Induce or compel any person to enter the agency, for any
43 purpose, by the use of force or by taking forcible possession of
44 such person's property.

45 (12) Publish or cause to be published any false or fraudulent
46 or misleading notice or advertisement. All advertisements of any
47 agency by means of cards, circulars or signs, or in newspapers
48 and other publications, and all letterheads, receipts and blanks
49 shall contain the name and address of the agency, and no agency
50 shall give any false promise or false representation concerning
51 employment to any applicant for employment or help, or enter into
52 any contract with any applicant for help or employment or induce
53 or try to induce any applicant for help or employment to make any
54 agreement, the provisions of which contract or agreement, if ful-
55 filled, is in violation of any provisions of this act.

56 (13) Induce or attempt to induce any persons working under
57 contract with his employer to leave the employment under which

58 he is working under said contract until such time as said contract
59 is completed or the employee is no longer responsible for its
60 completion.

1 10. Section 11 of P. L. 1951, c. 337 (C. 34:8-34) is amended to
2 read as follows:

3 11. The **【commissioner】** *Attorney General* may withhold any
4 license if it appears to him after investigation, and hearings if
5 necessary, that the needs of employers and employees of any
6 given municipality in which the employment agency is sought to be
7 licensed are adequately served by public free employment offices
8 or by licensed private employment agencies, or both; and that the
9 granting of any additional license for an employment agency to
10 be located in any given municipality is contrary to the best interest
11 and welfare of the public.

1 11. Section 12 of P. L. 1951, c. 337 (C. 34:8-35) is amended to
2 read as follows:

3 12. The **【commissioner】** *Attorney General* may refuse to issue,
4 and may revoke, any license for any failure to comply with, or
5 violation of, the provisions of this act or for any other good cause
6 shown, within the meaning and purpose of this act. No such refusal
7 or revocation shall be made except upon reasonable notice to, and
8 opportunity to be heard by, the applicant or licensee, as the case
9 may be. The **【commissioner】** *Attorney General* instead of revok-
10 ing any license, may suspend the same for such period of time as
11 he shall determine to be just and proper, and he may issue a new
12 license, notwithstanding the revocation of a prior license, provided
13 he shall find that the applicant shall have become entitled to such
14 new license.

1 12. Section 13 of P. L. 1951, c. 337 (C. 34:8-36) is amended to
2 read as follows:

3 13. This act shall be administered by the **【commissioner】** *Attor-*
4 *ney General* and he shall make and promulgate such rules and
5 regulations as may be required for the effectuation of the purposes
6 and provisions of this act; provided, that before such rules and
7 regulations or modifications thereof may be promulgated, written
8 notice shall be sent to the holder of each employment agency
9 owner's license and each employment agency operator's license
10 which notice shall contain in full the provisions of the rules and
11 regulations proposed and notice of the time and place of a public
12 hearing to be held not sooner than 5 days nor later than 15 days
13 following the date of notice, at which hearing all persons in favor
14 of or opposed to the proposed rules and regulations or modifications

15 thereof may be heard; and further provided, that the purpose, the
16 time and place of such hearing shall also be published for the
17 information of the public not sooner than 5 days nor later than
18 15 days following the notice to licensees. Any rules and regulations
19 or modifications thereof, promulgated by the [commissioner]
20 *Attorney General*, shall be filed with the Secretary of State within
21 5 days after such promulgation.

1 13. Section 14 of P. L. 1951, c. 337 (C. 34:8-37) is amended to
2 read as follows:

3 14. Any person who is the holder of a license to open, keep or
4 carry on any employment agency, issued under the provisions of
5 Revised Statutes, Title 34, chapter 8, and who applies for a new
6 license to be issued under the provisions of this act within a period
7 of not more than 30 days prior to the expiration date of the
8 license held by him at the time of such application shall be entitled
9 to receive the new license applied for upon filing with the [com-
10 missioner] *Attorney General* the required bond and the payment
11 of the required fee.

12 Any person who is a holder of an employment agency owner's
13 license issued under the provisions of this act and *who* applies for
14 a new license to be issued under the provisions of this act shall be
15 entitled to receive the new license applied for upon filing with the
16 [commissioner] *Attorney General* the required bond and the pay-
17 ment of the required fee.

18 Any individual person who, on the effective date of this act,
19 is the holder of a license to open, keep or carry on an employment
20 agency, issued under the provisions of Revised Statutes of New
21 Jersey, Title 34, chapter 8, and who shall, within a period of
22 not more than 30 days preceding the expiration date of such license,
23 apply for an employment agency operator's license shall, upon the
24 payment of the required fee, be entitled to receive an employment
25 agency operator's license authorizing his dealing in the type of
26 occupations and employment in which he has been authorized to
27 deal in by the license held by him at the time of said application.

28 Any individual person who is the holder of an employment
29 agency operator's license, issued under the provisions of this
30 chapter, who shall file an application for a new license to become
31 effective upon the expiration date of the license in effect at the
32 time of application, shall, upon the payment of the required fee,
33 be entitled to the license applied for.

1 14. (New section) Services provided by a temporary help service
2 firm shall constitute services within the term "merchandise" pur-

3 suant to P. L. 1960, c. 39, s. 1 (C. 56:8-1(c)), and the provisions of
4 [P. L. 1960, c. 39*[, s. 1]* (C. 56:8-1 et seq.) shall apply to the
5 operation of a temporary help service firm.

6 The Attorney General *[may]* *shall* promulgate rules and
7 regulations pursuant to P. L. 1960, c. 39, s. 4 (C. 56:8-4). *The*
7A *Attorney General shall, by rule or regulation, establish, prescribe*
7B *or change an annual fee or charge on temporary help service firms*
7C *to such extent as shall be necessary to defray all proper expenses*
7D *incurred by his office in the performance of its duties under this*
7E *section of this act but such fees or charges shall not be fixed at a*
7F *level that will raise amounts in excess of the amount estimated*
8 *to be so required.** In addition to any other appropriate require-
9 ments, the Attorney General *[may]* *shall*, by rule or regula-
9A tion require the following:

10 a. Each temporary help service firm operating within the State
11 of New Jersey shall, prior to *the effective date of this act or**
11A *commencement of operation and annually thereafter**, notify
12 the Attorney General as to its appropriate name, if applicable; the
13 trade name of its operation; its complete address, including street
14 and street number of the building and place where its business is
15 to be conducted; and the names and resident addresses of its officers.
16 Each principal or owner shall provide an affidavit to the Attorney
17 General setting forth whether such principal or owner has ever
18 been convicted of a crime.

19 b. When a temporary help service firm utilizes any location other
20 than its primary location for the recruiting of applicants, including
21 mobile locations, it shall notify the Office of the Attorney General
22 of such fact in writing or by telephone, and subsequently confirm in
23 writing prior to the utilization of such facility.

24 c. Each temporary help service firm shall at the time of its
25 initial notification to the Attorney General, and annually there-
26 after, post a bond of \$1,000.00 with the Attorney General to secure
27 compliance with P. L. 1960, c. 39 (C. 56:8-1 et seq.) as amended and
28 supplemented, provided however that the Attorney General may
29 waive such bond for any corporation or entity having a net worth
30 of \$100,000 or more.

1 15. This act shall take effect on the ninetieth day next following
2 enactment.

3 suant to P. L. 1960, c. 39, s. 1 (C. 56:8-1(c)), and the provisions of
4 P. L. 1960, c. 39, s. 1 (C. 56:8-1 et seq.) shall apply to the operation
5 of a temporary help service firm.

6 The Attorney General may promulgate rules and regulations
7 pursuant to P. L. 1960, c. 39, s. 4 (C. 56:8-4). In addition to any
8 other appropriate requirements, the Attorney General may, by rule
9 or regulation require the following:

10 a. Each temporary help service firm operating within the State
11 of New Jersey shall, prior to commencement of operation, notify
12 the Attorney General as to its appropriate name, if applicable; the
13 trade name of its operation; its complete address, including street
14 and street number of the building and place where its business is
15 to be conducted; and the names and resident addresses of its officers.
16 Each principal or owner shall provide an affidavit to the Attorney
17 General setting forth whether such principal or owner has ever
18 been convicted of a crime.

19 b. When a temporary help service firm utilizes any location other
20 than its primary location for the recruiting of applicants, including
21 mobile locations, it shall notify the Office of the Attorney General
22 of such fact in writing or by telephone, and subsequently confirm in
23 writing prior to the utilization of such facility.

24 c. Each temporary help service firm shall at the time of its
25 initial notification to the Attorney General, and annually there-
26 after, post a bond of \$1,000.00 with the Attorney General to secure
27 compliance with P. L. 1960, c. 39 (C. 56:8-1 et seq.) as amended and
28 supplemented, provided however that the Attorney General may
29 waive such bond for any corporation or entity having a net worth
30 of \$100,000 or more.

1 15. This act shall take effect on the ninetieth day next following
2 enactment.

SPONSOR'S STATEMENT

The main purpose of the bill is to exempt temporary help service companies from licensing and regulation under the private employment agency act, if the companies operate in a prescribed manner. The temporary help service company must employ the persons assigned to work on customer premises, pay wages, pay Federal social security taxes and unemployment compensation insurance taxes, carry workers' compensation insurance, and sustain responsibility for acts of its temporary employees. By contrast, no employment agency performs any of these functions.

The bill also contains other significant provisions which protect various segments of the New Jersey economy, including:

—The temporary help service company cannot prevent any of its temporary employees from seeking and procuring permanent employment.

—The temporary help service company cannot knowingly service any customer where a strike or lockout exists for the purpose of replacing the customers' striking or locked out employees.

—The temporary help service company cannot commingle operations with a private employment agency as prescribed by regulations.

In addition, this bill includes temporary help service firms within the scope of the consumer fraud laws, P. L. 1960, c. 39, as amended and supplemented.

New Jersey is the only state in the United States to regulate temporary help service companies as private employment agencies. Every other jurisdiction which has considered this question has ruled that the temporary help service company is an employer and not an employment agency. An employer-employee relationship exists between the temporary help service company and its employees regardless of the number or duration of the assignments of the employees. This contrasts with the agency relationship that exists between an employment agency and the permanent job seeker, an intermediary relationship between a prospective employer and the prospective employee.

The experience of temporary help service companies regulated as employment agencies in New Jersey has been negative. Employment agency status has had a retardant impact upon acceptance of temporary help service companies as a significant source of employment for many persons, including thousands of individuals drawing unemployment compensation or receiving welfare payments.

ASSEMBLY COMMERCE, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 870

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 19, 1980

This bill exempts most temporary help service firms from licensing and regulation under the private employment agency act and provides for their registration and regulation by the Attorney General under the "Consumer Fraud Act."

Under the bill a temporary help service firm is prohibited from (a) charging a temporary help service employee a fee or liquidated charge; (b) preventing by contract any of its employees from seeking and procuring permanent employment; (c) knowingly sending its employees to a customer to serve as strikebreakers; and (d) commingling its temporary help service operation with its employment agency operation if it is engaged in both.

As amended by the committee, section 14 of the bill provides that temporary help service firms are subject to the provisions of the "Consumer Fraud Act" and that the Attorney General shall issue rules and regulations. These rules and regulations shall provide for an annual fee on temporary help service firms, an annual registration of them, and the bonding of such firms.

The substitution of "Attorney General" for "commissioner" in the bill is a technical change. The powers of the Commissioner of Labor and Industry to regulate and license private employment agencies were transferred to the Attorney General by P. L. 1972, c. 117. Also, on page 1 of the bill the businesses of providing domestic personnel (other than home health personnel), baby sitters and crew chiefs were originally added to the definition of "employment agency." The committee deleted this addition because these businesses are already covered or excluded by exemption from the act. Further, the reference to home health personnel may be interpreted as excluding them from the private employment agency act and the inclusion of crew chiefs may create confusion as to administrative jurisdictions for crew chiefs or leaders are registered and regulated under the joint auspices of the U. S. Department of Labor and the State Department of Labor and Industry.

ASSEMBLY COMMITTEE AMENDMENTS TO

ASSEMBLY, No. 870

STATE OF NEW JERSEY

ADOPTED MAY 19, 1980

Amend page 1, section 1, line 10, omit "or the business of providing domes-".

Amend page 1, section 1, lines 11-12, omit in entirety.

Amend page 1, section 1, line 13, omit "in agricultural operations,".

Amend page 3, section 1, lines 104-105, omit "(other than those specifically included in the definition of "employment agency")".

Amend page 4, section 1, line 108, after "customers'", insert "temporary,".

Amend page 7, section 4, line 17, omit "commissioner", insert "Attorney General".

Amend page 17, section 14, line 4, omit ", s. 1".

Amend page 17, section 14, line 6, omit "may", insert "shall".

Amend page 17, section 14, line 7, after "(C. 56:8-4).", insert "The Attorney General shall, by rule or regulation, establish, prescribe or change an annual fee or charge on temporary help service firms to such extent as shall be necessary to defray all proper expenses incurred by his office in the performance of its duties under this section of this act but such fees or charges shall not be fixed at a level that will raise amounts in excess of the amount estimated to be so required.".

Amend page 17, section 14, line 8, omit "may", insert "shall".

Amend page 17, section 14, line 11, after "to", insert "the effective date of this act or".

Amend page 17, section 14, line 11, after "operation", insert "and annually thereafter".

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

JANUARY 16, 1981

FOR IMMEDIATE RELEASE

PAT SWEENEY

Governor Brendan Byrne today has signed A-870, sponsored by Assemblyman Christopher J. Jackman (D-Hudson), which exempts temporary help service firms from licensing and regulation under the Private Employment Agency Act, and provides for registration and regulation by the Attorney General under the Consumer Fraud Act.

Under the bill a temporary help service firm is prohibited from:

-- charging a temporary help service employee a fee or liquidated charge. If a fee or liquidated charge is imposed then the temporary agency will be considered a permanent employment agency and subject to the Private Employment Agency Act;

-- preventing by contract any of its employees from seeking and obtaining permanent employment;

-- knowingly sending its employees to a customer to serve as a strikebreaker; and

-- commingling its temporary help service operations with its Employment Agency Operations if it is engaged in both. As commingling occurs then the Agency will be considered a private employment agency and regarded as such.

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