

PRIVATE PERSONNEL SERVICES

**North Carolina General Statutes
Chapter 95, Article 5A**

AND

JOB LISTING SERVICES

**North Carolina General Statutes
Chapter 95, Article 5B**

AND

ADMINISTRATIVE RULES

**North Carolina Administrative Code
Title 13, Chapters 17 and 18**

WITH REVISIONS THROUGH AUGUST, 2004



**Wage and Hour Bureau
1101 Mail Service Center
Raleigh, North Carolina 27699-1101
(919) 807-2796 or 1-800-NC-LABOR (1-800-625-2267)**

**Cherie K. Berry
Commissioner of Labor**

Introduction

This publication contains the general statutes and administrative rules by which private personnel services agencies (Chapter 95, Article 5A of the N.C. General Statutes and Title 13, Chapter 17 of the N.C. Administrative Code) and job listing services (Chapter 95, Article 5B of the N.C. General Statutes and Title 13, Chapter 18 of the N.C. Administrative Code) in North Carolina are regulated. It is intended for use by agencies and applicants to inform them of the requirements and their rights and responsibilities under the law. Enforcement of the provisions of these statutes is assigned to the Wage and Hour Bureau. As a result of a departmental reorganization, the Private Personnel Service Division has been consolidated with the Wage and Hour Bureau; therefore, all references to the Private Personnel Service Division or its director should be read as referring to the Wage and Hour Bureau and its administrator. Citizens or applicants who believe that agencies are not in compliance with the requirements of these statutes and rules are invited to avail themselves of the services of the Wage and Hour Bureau.

We encourage and solicit public comments concerning these laws and regulations. Please direct your comments and questions to the Wage and Hour Bureau, N.C. Department of Labor, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101.

Cherie K. Berry
Commissioner of Labor

August 2004

Table of Contents

PRIVATE PERSONNEL SERVICES

<u>N.C. General Statutes</u>	Page
Chapter 95, Article 5A – Private Personnel Services Act	1
§ 95-47.1 Definitions.....	1
§ 95-47.2 Licensing Procedures	2
§ 95-47.3 Fees and Contracts; Filing With Commissioner	5
§ 95-47.3A Fee Reimbursement From Employers Due to Overstated Earnings Expectations.....	6
§ 95-47.4 Contracts; Contents; Approval; Trying Contracts Forbidden.....	7
§ 95-47.5 Records	8
§ 95-47.6 Prohibited Acts.....	9
§ 95-47.7 Repealed by Session Laws 2003-308, s. 10.....	9
§ 95-47.8 Repealed by Session Laws 2003-308, s. 11	9
§ 95-47.9 Enforcement of Article; Rules; Hearing; Penalty; Criminal Penalties	10
§ 95-47.10 Power of Commissioner to Seek Injunction	10
§ 95-47.11 Government Employment Agencies Unaffected	11
§ 95-47.12 License Taxes Placed Upon Agencies Not Affected	11
§ 95-47.13 Severability	11
§ 95-47.14 Notification Requirement.....	11
§ 95-47.15 Certification Requirement.....	11
<u>N.C. Administrative Code</u>	
Title 13, Chapter 17 – Private Personnel Services	13
Section .0100 Private Personnel Services Regulations.....	13
.0101 Definitions.....	13
.0102 Licensing Procedures	15
.0103 Duration and Renewal of License.....	16
.0104 Change of Private Personnel Service Status	17
.0105 Fee Reimbursement	18
.0106 Job Orders	20
.0107 Contracts	21
.0108 Records	24
.0109 Advertising.....	24
.0110 Prohibited Acts.....	24
.0111 Penalty.....	24
Section .0200 General Provisions	25
.0201 Accepting Fees From Applicant and Employer.....	25
.0202 Activities of Business Considered To Be a Private Personnel Service ...	25
.0203 Reserved for Future Codification.....	26
.0204 Review of Licensee’s Records.....	26
.0205 Disclosure of Financial Relationships	26

JOB LISTING SERVICES

N.C. General Statutes

Chapter 95, Article 5B – Job Listing Services Act.....27

 § 95-47.19 Definitions.....27

 § 95-47.20 License Required27

 § 95-47.21 Violation of This Article; Criminal and Civil Penalty27

 § 95-47.22 Licensing Procedures27

 § 95-47.23 Enforcement.....28

 § 95-47.24 Certain Practices Prohibited.....28

 § 95-47.25 Contracts; Contents; Approval.....28

 § 95-47.26 Advertising and Publication.....29

 § 95-47.27 Fee Receipts29

 § 95-47.28 Prohibited Job Listings29

 § 95-47.29 Records of the Job Listing Service29

 § 95-47.30 Administration of This Article.....30

 § 95-47.31 Review of Job Listing Services.....30

 § 95-47.32 Severability30

N.C. Administrative Code

Title 13, Chapter 18 – Job Listing Services.....31

 Section .0100 Private Personnel Services Regulations.....31

 .0101 Introduction.....31

 .0102 Definitions.....31

 .0103 Licensing Procedures31

 .0104 Surety Bonds.....32

 .0105 Contracts32

 .0106 Records32

 .0107 Advertising.....33

 .0108 Prohibited Acts.....33

 .0109 Review of Job Listing Services.....33

 .0110 Penalty.....33

MISCELLANEOUS

N.C. General Statutes

 § 126-18 Compensation for Assisting Person In Obtaining State Employment
 Barred; Exception35

N.C. GENERAL STATUTES
CHAPTER 95 – DEPARTMENT OF LABOR
ARTICLE 5A – REGULATION OF PRIVATE PERSONNEL SERVICES

(Revised as of August 1, 2004)

§ 95-47.1. Definitions.

As used in this Article, unless the context clearly requires otherwise:

- (1) "Accept" employment means to accept an employer's offer of employment or to begin work for an employer.
- (2) "Applicant," except where it refers to an applicant for a private personnel services license, means any person who uses or attempts to use the services of a private personnel service in seeking employment.
- (3) "Commissioner" means the North Carolina Commissioner of Labor or any person designated by the Commissioner as the representative of the Commissioner.
- (4) "Complaint" means a communication to the Commissioner or department alleging facts that could support issuance of a warning or citation under G.S. 95-47.9.
- (5) "Contract" means any agreement between a private personnel service and an applicant obligating the applicant to pay a fee or any agreement subsequent to such contract reducing the obligations of the private personnel service to the applicant under the contract.
- (6) "Employee" means a person performing work or services of any kind or character for compensation.
- (7) "Employer" means a person employing or seeking to employ a person for compensation, or any representative or employee of such employer.
- (8) "Employment" means any service or engagement rendered or undertaken for wages, salary, commission, or other form of compensation.
- (9) "Fee" means anything of value, including money or other valuable consideration or services or the promise of any of the foregoing, required or received by a private personnel service, in payment for any of its services, or act rendered or to be rendered by any private personnel service.
- (10) "Interview" means a meeting between an employer and an applicant to discuss potential employment.
- (11) "Job order" means an oral or written communication from an employer authorizing a private personnel service to refer applicants for a position the employer has available.
- (12) "Licensee" means any person licensed by the Commissioner to operate a private personnel service.
- (13) "Manager" of a private personnel service means the person who is responsible for the operation of an office of a private personnel service.
- (14) "Owner" of a private personnel service means the sole proprietor of a private personnel service operated as a sole proprietorship; any partner in a partnership that owns or operates a private personnel service; any stockholder with a financial interest greater than 10 percent (10%) in a corporation that owns or operates a private personnel service.
- (15) "Person" means any individual, association, partnership or corporation.

- (16) "Private personnel service" means any business operated in the State of North Carolina by any person for profit which secures employment or by any form of advertising holds itself out to applicants as able to secure employment or to provide information or service of any kind purporting to promote, lead to or result in employment for the applicant with any employer other than itself, where any applicant may become liable for the payment of a fee to the private personnel service, either directly or indirectly. "Private personnel service" does not include:
- a. Any educational, religious, charitable, fraternal or benevolent organization which charges no fee for services rendered in securing employment or providing information about employment;
 - b. Any employment service operated by the State of North Carolina, the Government of the United States, or any city, county, or town, or any agency thereof;
 - c. Any temporary help service that at no time advertises or represents that its employee may, with the approval of the temporary help service, be employed by one of its client companies on a permanent basis and which does not act as a private personnel service or an employer fee paid personnel service;
 - d. Any newspaper of general circulation or other business engaged primarily in communicating information other than information about specific positions of employment and that does not purport to adapt the information provided to the needs or desires of an individual subscriber;
 - e. Employment offices that charge no fee to the applicant other than union dues or to the employer and which are used solely for the hiring of employees under a valid union contract by the employer subscribing to this contract;
 - f. Any employer fee paid personnel consulting service or temporary help service that offers temporary to permanent placement when the service operates on a one hundred percent (100%) employer fee paid service basis, requires no applicant placement contract, and has no recourse against an applicant for a fee under any circumstances.
- (17) "Refer" an applicant means to submit resumes to an employer, arrange interviews between an applicant and an employer, or to provide an employer with the name of an applicant. (1929, c. 178, ss. 1, 10; 1979, c. 780, s. 1; 1989, c. 414, s. 1.)

§ 95-47.2. Licensing procedures.

(a) No person shall open, keep, maintain, own, operate or carry on a private personnel service unless the person has first procured a license therefor as provided in this Article.

(b) An application for license shall be made to the Commissioner. If the private personnel service is owned by an individual, the application shall be made by that individual; if the service is owned by a partnership, the application shall be made by all partners; if the service is owned by a corporation, the application shall be made by all stockholders who own at least twenty percent (20%) of the issued and outstanding voting stock of the corporation, or if the service is owned by an association, society, or corporation in which no one individual owns at least twenty percent (20%) of the issued and outstanding voting stock, the application shall be made by the

president, vice-president, secretary and treasurer of the owner, by whatever title designated. The application shall state the name and address of the individual who is responsible for the direction and operation of the placement activities of the private personnel service whether that individual be one of the applicants or another person; whether or not that individual has ever been employed in a private personnel service; the name and address of each of the license applicant's prior employers during the five years immediately preceding the license application; and such other information relating to the good moral character of that individual as the Commissioner may require. No change in such persons shall take place without prior notification to the Commissioner.

(c) Each application for license shall be in writing and in the form prescribed by the Commissioner, and shall state truthfully the name under which the business is to be conducted; the street and number of the building or place where the business is to be conducted.

(d) Upon the receipt of an application for a license the Commissioner:

- (1) Shall publish a notice of the pending application in a newspaper of general circulation in the area of the proposed location of the employment agency and may publish the notice in a newspaper of general circulation in each area in which the applicant (or if a corporation, the president and majority shareholder) has resided during the five years preceding the time of the application. The applicant shall incur the cost associated with the publication of this legal advertisement. The notice shall include a statement informing individuals of their right to protest the issuance of a license by filing within 10 days written comments with the Commissioner. The protest shall be in writing and signed by the person filing the protest or by his authorized agent or attorney, and shall state reasons why the license should not be granted. Upon the filing of a protest, the Commissioner, if he determines the protest to be of such a nature that a hearing should be conducted and that the protest is for a cause on which denial of a license may properly be based, shall appoint a time and place for a hearing on the application and shall give at least seven days' notice of that time and place to the license applicant and to the person filing the protest. The hearing shall be conducted in accordance with the provisions of the rules of the Administrative Procedure Act.
- (2) Shall investigate the character, criminal record and business integrity of each applicant for agency license and shall investigate the criminal records of all persons listed as agency owners, officers, directors or managers. The applicant and all agency owners, officers, directors and managers shall assist the department in obtaining necessary information by authorizing the release of all relevant information. The applicant shall incur the cost associated with this background investigation.
- (2a) The Department of Justice may provide a criminal record check to the Commissioner for a person or agency who has applied for a license through the Commissioner. The Commissioner shall provide to the Department of Justice, along with the request, the fingerprints of all applicants, any additional information required by the Department of Justice, and a form signed by the applicants consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicants' fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the

fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Commissioner shall keep all information pursuant to this subdivision privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subdivision.

- (3) Upon completion of the investigation, or 60 days after the application was received, whichever is later, but in no case more than 75 days after the application was received, shall determine whether or not a license should be issued. The license shall be denied for any of the following reasons:
- a. If the applicant for agency license, or the president or majority shareholder of a corporate applicant, omits or falsifies any material information asked for in the application and required by the Commissioner.
 - b. If any owner, officer, director or manager of the employment agency:
 1. Has been convicted in any state of the criminal offense of embezzlement, obtaining money under false pretenses, forgery, conspiracy to defraud or any similar offense involving fraud or moral turpitude;
 2. Was an owner, officer, director or manager of an employment agency or other business whose license was revoked or that was otherwise caused to cease operation by action of any State or federal agency or court because of violations of law or regulation relating to deceptive or unfair practices in the conduct of business;
 3. As an owner or manager of an employment agency or other business or as an employment counselor was found by any State or federal agency or court to have violated any law or regulation relating to deceptive or unfair practices in the conduct of business; or
 4. In any other demonstrable way engaged in deceptive or unfair practices in the conduct of business.
 - c. If the employment agency will be operated on the same premises as a loan agency (as defined in G.S. 105-88) or collection agency (as defined in G.S. 58-70-15).

(e) If it appears upon the hearing or from the inspection, examination or investigation made by the Commissioner that the owners, partners, corporation officers or the agency manager are not persons of good moral character or that the license applicant has not complied with the provisions of this Article, the application shall be denied and a license shall not be granted. The Commissioner shall find facts to substantiate his denial of the issuance of a license. Each application shall be granted or refused within 60 days from the date of its filing, or if a hearing is held, within 75 days. Any license heretofore or hereafter issued shall expire 12 months from the date of its issuance, and shall be renewed as hereinafter provided unless sooner revoked by the Commissioner.

(f) No license shall be granted to a person to operate as a private personnel service where the name of the business is similar or identical to that of any existing licensed business (except where a franchiser has licensed two or more persons to use the same name within the State) or

directly or indirectly expresses or connotes any limitation, specification or discrimination contrary to current State or federal laws against discrimination in employment.

(g) Every license shall contain the name of the person licensed and shall designate the city in which the license is issued, the name of the manager and date of the license. The license shall be displayed in a conspicuous place in the area where job applicants are received by the agency.

(h) A license granted as provided in this Article shall not be valid for any person other than the person to whom it is issued or for any place other than that designated in the license and shall not be assigned or transferred without the consent of the Commissioner, whose consent must be based on the standards contained in this Article. Applications for consent to assign or transfer shall be made in the same manner as an application for a license, and all the provisions of this Article shall apply to applications for consent. The location of a private personnel service shall not be changed without notice to the Commissioner, and any change of location shall be endorsed upon the license. A person who has obtained a license in accordance with the provisions of this Article may apply for additional licenses to conduct additional private personnel services in accordance with the provisions of this Article. The manner of application, and the conditions and terms applicable to the issuance of the additional licenses shall be the same as for an original license. The same agency manager may be designated in all such licenses.

(i) Temporary license. – If ownership of a licensed private personnel service is transferred, the department shall issue a temporary license to any new owner or successor if it appears to the department that issuance of such a license would serve the public interest. A temporary license shall be effective for a period of 90 days and shall not be renewed.

(j) Each licensee shall, before the license is issued or renewed, deposit with the department a bond payable to the State of North Carolina and executed by a surety company duly authorized to transact business in the State of North Carolina in the amount of ten thousand dollars (\$10,000) and upon condition that the private personnel service will pay to applicants all refunds due under this Article and regulations adopted hereunder if the private personnel service terminates its business. (1929, c. 178, ss. 2, 3; 1931, c. 312, s. 3; 1979, c. 780, s. 1; 1987, c. 282, s. 12; 1989, c. 414, s. 2; 2002-147, s. 12; 2003-308, s. 9.)

§ 95-47.3. Fees and contracts; filing with Commissioner.

(a) Every license applicant shall file with the Commissioner a schedule of fees or charges made by the private personnel service to applicants for employment for any services rendered, stating clearly the conditions under which the private personnel service refunds or does not refund a fee, together with all rules or regulations that may in any manner affect the fees charged or to be charged for any service. Every license applicant and licensee shall include in its schedule of fees or charges a clear description of how it determines fees for placement of employment, the compensation of which is based, in whole or in part, on commission. Changes in the schedule may be made, but no change shall become effective until seven calendar days after the filing thereof with the Commissioner. It is unlawful for a private personnel service to charge, demand, collect or receive a greater compensation from an applicant for employment for any service performed than as specified in the schedule filed with the Commissioner.

(b) Every license applicant shall file with the Commissioner a copy of the contract which the private personnel service will require applicants for employment to execute. (1979, c. 780, s. 1; 1991 (Reg. Sess., 1992), c. 970, s. 1.)

§ 95-47.3A. Fee reimbursement from employers due to overstated earnings expectations.

(a) An applicant who accepts employment that is compensated in whole or in part on a commission basis, and who pays a fee to the licensee calculated on the commission-based compensation amount stated by the employer in the written job order, may file a written complaint with the Commissioner if the applicant did not earn at least eighty percent (80%) of the compensation amount stated by the employer in the written job order. If the applicant files the written complaint before the period upon which the anticipated earnings is based has ended, the Commissioner shall prorate the amount earned over the period of time the applicant worked prior to the filing of the complaint in order to determine whether or not the applicant earned at least eighty percent (80%) of the compensation amount stated by the employer in the written job order.

(b) The Commissioner shall investigate all complaints filed pursuant to subsection (a) of this section. After completion of the investigation and a hearing, the Commissioner shall order the employer to reimburse the applicant for part or all of the fee paid by the applicant to the licensee if the Commissioner finds the applicant is entitled to the refund based on all of the following:

- (1) The applicant did not earn at least eighty percent (80%) of the compensation amount stated by the employer in the written job order;
- (2) The licensee reasonably relied on the compensation information provided by the employer in calculating the fee paid by the applicant;
- (3) It is unrealistic to expect that an employee could earn substantially the amount of commission-based compensation stated by the employer in the written job order filed with the licensee; and
- (4) The fee paid by the applicant to the licensee was calculated based on the commission-based compensation stated by the employer in the written job order.

(c) The reimbursement due the applicant under subsection (b) shall be the difference between the fee actually paid by the applicant to the licensee, and the fee that the applicant would have paid if the compensation stated by the employer in the written job order had been what the applicant actually earned or reasonably could have earned during the applicable employment period.

(d) The Commissioner shall adopt rules setting forth procedures for complaints and investigations, and standards for determining whether a statement by the employer in the licensee's written job order of potential or anticipated commission-based earnings is realistic under the circumstances. The Commissioner or his authorized representative shall have power to administer oaths and examine witnesses, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and take depositions and affidavits in any proceeding hereunder. Additionally, the Commissioner shall adopt rules setting forth procedures for enforcement of any order made under subsections (b) and (c) of this section. Rules adopted by the Commissioner pursuant to this section shall be in accordance with Chapter 150B of the General Statutes.

(e) The Commissioner shall enforce and administer the provisions of this section, and the Commissioner or his authorized representative is empowered to hold hearings and to institute civil proceedings to collect on behalf of the applicant any amounts determined to be owed by the employer. (1991 (Reg. Sess., 1992), c. 970, s. 3.)

§ 95-47.4. Contracts; contents; approval; tying contracts forbidden.

(a) A contract between a private personnel service and an applicant shall be in writing, labeled as a contract, physically separate from any application and made in duplicate. One copy shall be given to the applicant and the other shall be kept by the private personnel service as required by G.S. 95-47.5(2).

(b) Any contract that obligates an applicant to pay a fee to the private personnel service shall include:

- (1) The name, address and telephone number of the private personnel service;
- (2) The name of the applicant;
- (3) The date the contract was signed;
- (4) A clear schedule of the fees to be charged to the applicant at various salary levels;
- (5) A clear explanation of when the applicant becomes obligated to pay a fee;
- (6) A clear refund policy (or no refund policy) that conforms to the requirements of G.S. 95-47.4(f) and (g);
- (7) If the applicant is obligated whether or not the applicant accepts employment, a clear explanation of the services provided and a statement that the private personnel service does not guarantee that the applicant will obtain employment as a result of its services;
- (8) A statement, in a type size no smaller than nine point, directly above the place for the applicant's signature, that reads as follows: "I have read and received a copy of this CONTRACT, which I understand makes me legally obligated to pay a fee under conditions outlined above." In the preceding statement the word "CONTRACT" and no others shall be in all capitals; and
- (9) A statement that the private personnel service is licensed and regulated by the Commissioner and the address at which a copy of laws and regulations governing private personnel services may be obtained.

(c) A copy of each contract form to be used with applicants shall be filed with the Commissioner. Until the private personnel service receives written notification from the Commissioner that the form conforms to the requirements of this Article and regulations adopted hereunder, it shall not be used with applicants.

(d) A private personnel service shall not require an applicant to sign a contract with the private personnel service before the applicant has had an opportunity to read the contract and discuss the contract with an employee of the personnel agency who regularly arranges contacts and assists in negotiations between employers and applicants. A private personnel service shall not coerce an applicant into signing a contract by applying or using duress, undue influence, fraud or misrepresentation sufficient to invalidate the contract under North Carolina law.

(e) Any contract that obligates an applicant to pay a fee to the private personnel service when the applicant accepts employment shall be physically separate from any contract that obligates an applicant to pay a fee whether or not the applicant accepts employment. A private personnel service shall not require an applicant to sign one contract as a prerequisite to signing another contract or to pay a fee as a prerequisite to signing a contract. Express violations of this subsection are the following:

- (1) Refusal to allow an applicant to contract for counseling, job information or resume writing services, if the applicant does not agree to pay an additional fee upon acceptance of employment; and
- (2) Refusal to allow an applicant to contract for services which obligate the applicant only upon acceptance of employment, if the applicant does not agree

to pay a registration fee or to contract for counseling, resume writing or other services.

(f) If a private personnel service has a refund policy, included on each contract that obligates an applicant upon acceptance of employment will be a statement defining:

- (1) The length of the period of time covered by the refund policy;
- (2) The exact manner of computing the refund so that the amount of refund due the applicant will be clear;
- (3) The conditions under which a refund becomes due to the applicant. The conditions of the refund, if other than unconditional policy is used, shall contain a definition of the reasons for which a refund will not be made. A refund will not be denied except for a reason so stated in the definition of the contract;
- (4) A personnel service shall abide by the refund policy stated on its contract by promptly paying to applicants any refund due under the terms of the contract.

(g) If a private personnel service has no refund policy, the private personnel service shall include on each contract that obligates an applicant upon acceptance of employment, in a type size no smaller than nine point, a statement that reads as follows:

"_____ (name of private personnel service) will make NO REFUND under any circumstances of fees paid by the applicant." In the preceding statement the words NO REFUND and no others shall be in all capitals.

(h) If a private personnel service places an applicant in a position of employment, the compensation of which is based, in whole or in part, on commission, the private personnel service shall:

- (1) Have a written job order from the employer that includes the anticipated earnings upon which the private personnel service may base its fee, or
- (2) In lieu of the written job order required by subdivision (1) of this subsection, have a policy of providing the same fee reimbursement as may be available to applicants from employers under the provisions of G.S. 95-47.3A.

In no case may the applicant collect the same reimbursement from both the employer and the private personnel service. When the private personnel service elects to obtain the written job order from the employer and not have its own reimbursement policy as described in subdivision (2) of this subsection, the private personnel service shall explain to the applicant and the employer how the fee for the placement is calculated, and shall inform in writing both the applicant and the employer of the provisions of G.S. 95-47.3A governing fee refunds from employers. (1979, c. 780, s. 1; 1991 (Reg. Sess., 1992), c. 970, s. 2; 1993, c. 202, s. 1; 1993 (Reg. Sess., 1994), c. 769, s. 29(a).)

§ 95-47.5. Records.

Every private personnel service shall maintain for a period of two years, the following records:

- (1) Job orders or job specifications.
- (2) Executed applicant contracts.
- (3) Information on all placements made, including the employer's name and address; name and address of applicant placed; salary of the position; amount of fee charged; and refunds, where applicable. (1929, c. 178, s. 4; 1931, c. 312, s. 3; 1979, c. 780, s. 1.)

§ 95-47.6. Prohibited acts.

A private personnel service shall not engage in any of the following activities or conduct:

- (1) Induce or attempt to induce any employee placed by that private personnel service to terminate his employment in order to obtain other employment through the private personnel service; or procure or attempt to procure the discharge of any person from his employment.
- (2) Publish or cause to be published any false or fraudulent information, representation, promise, notice or advertisement.
- (3) Advertise in newspapers or otherwise, unless the advertising contains the name of the private personnel service and the word "personnel service."
- (4) Direct an applicant to visit or call upon an employer for the purpose of obtaining employment without having first obtained a job order or authorization from the employer for the interview. A private personnel service may attempt to sell the services of an applicant to an employer from whom no job order has been received and may charge a fee if the efforts result in the applicant's being employed.
- (5) Send or cause to be sent any person to any employer where the private personnel service knows that the prospective employment is or would be in violation of State or federal laws governing minimum wages or child labor, or has been notified that a labor dispute is in progress, without notifying the applicant of that fact, or knowingly arrange an interview for an employment or occupation prohibited by law.
- (6) Send or cause to be sent any person to any place which the private personnel service knows is maintained for immoral or illicit purposes.
- (7) Divide or share, either directly or indirectly, the fees collected by the private personnel service, with contractors, sub-contractors, employers or their agents, foremen or anyone in their employ, or if the contractors, sub-contractors or employers be a corporation, any of the officers, directors or employees of the corporation to whom applicants for employment are sent.
- (8) Make, cause to be made, or use any name, sign or advertising device bearing a name which is similar to or may reasonably be confused with the name of a federal, State, city, county or other governmental unit or agency.
- (9) Knowingly make any false or misleading promise or representation or give any false or misleading information to any applicant or employer in regard to any employment, work or position, its nature, location, duration, compensation or the circumstances surrounding any employment, work or position including the availability thereof.
- (10) Accept a registration fee from an applicant.
- (11) Impose or attempt to collect any fee from any applicant unless that applicant accepts employment with an employer to which the applicant was directly or indirectly introduced by the private personnel service.
- (12) A fee may be charged for resume writing provided the private personnel service does not require the applicant to become obligated for any other services. (1979, c. 780, s. 1.)

§ 95-47.7: Repealed by Session Laws 2003-308, s. 10, effective July 1, 2003.

§ 95-47.8: Repealed by Session Laws 2003-308, s. 11, effective July 1, 2003.

§ 95-47.9. Enforcement of Article; rules; hearing; penalty; criminal penalties.

(a) This Article shall be enforced by the Commissioner. The Commissioner or any duly authorized agent, deputies or assistants designated by the Commissioner, may upon receipt of a complaint that a private personnel service has violated a specific section of this Article, inspect those records relevant to the complaint which this Article requires the private personnel service to retain. The Commissioner may also subpoena those records and witnesses and may conduct investigations of any employer or other person where the Commissioner has reasonable grounds for believing that the employer or person has conspired or is conspiring with a private personnel service to violate this Article.

(b) The Commissioner shall adopt rules necessary to carry out and administer the provisions of this Article.

(c) Complaints against any licensed person shall be made in writing to the Commissioner.

(1) If the complaint alleges a violation of this Article, the Commissioner shall cause an investigation to be made. If, as a result of the investigation, the Commissioner has reason to believe that a material violation of this Article has been committed by a private personnel service, the Commissioner may, after compliance with Chapter 150B of the General Statutes, deny, suspend, or revoke a license issued under this Article if it is determined that the licensee or any employee of the licensee is guilty of violating the provisions of this Article. In addition, the Commissioner may issue warnings or levy a fine against the private personnel service that shall not exceed two hundred fifty dollars (\$250.00).

(2) The denial, revocation, or suspension of a license or the issuance of a warning or fine by the Commissioner shall be in writing, shall be signed by the Commissioner or the Commissioner's designee, and shall state the grounds upon which the decision is based. The aggrieved person shall have the right to appeal from the decision as provided by Chapter 150B of the General Statutes.

(d) Whenever a license is revoked pursuant to subsection (c) of this section, another license shall not be issued to the same person within three years from the date of the revocation.

(e) Any person who operates as a private personnel service without first obtaining the appropriate license (i) shall be guilty of a Class 1 misdemeanor; and (ii) be subject to a civil penalty of not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00) for each day the private personnel service operates without a license, the penalty not to exceed a total of two thousand dollars (\$2,000). Actions to recover civil penalties shall be initiated by the Attorney General. The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1929, c. 178, ss. 3-5, 7, 9; 1931, c. 312, s. 3; 1979, c. 780, s. 1; 1993, c. 539, s. 663; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 109; 2003-308, s. 12.)

§ 95-47.10. Power of Commissioner to seek injunction.

The Commissioner may apply to courts having jurisdiction for injunctions to prevent violations of this Chapter or of rules issued pursuant thereto, and such courts are empowered to grant such injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of such violation. A single act of unauthorized or illegal practice shall be sufficient, if shown, to invoke the injunctive relief of this section or criminal or civil penalties under G.S. 95-47.9(e). (1979, c. 780, s. 1.)

§ 95-47.11. Government employment agencies unaffected.

This Article shall not in any manner affect or apply to the State of North Carolina, the government of the United States, or to any city, county or town, or any agency of any of those governments. (1929, c. 178, s. 10; 1979, c. 780, s. 1.)

§ 95-47.12. License taxes placed upon agencies not affected.

This Article is not intended to conflict with or affect any license tax placed upon private personnel services by the revenue laws of North Carolina, but instead shall be construed as supplementary thereto in exercising the police powers of the State. (1929, c. 178, s. 11; 1979, c. 780, s. 1.)

§ 95-47.13. Severability.

If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Article are severable. (1929, c. 178, s. 9; 1979, c. 780, s. 1.)

§ 95-47.14. Notification requirement.

Any temporary help service as described in G.S. 95-47.1(16)c. that operates in North Carolina shall notify the Department of Labor in writing that the temporary help service:

- (1) Operates only as a temporary help service;
- (2) Establishes an employer-employee relationship with its temporaries;
- (3) Does not operate as a private personnel service or an employer fee paid personnel consulting service. (1989, c. 414, s. 3.)

§ 95-47.15. Certification requirement.

Any employer fee paid personnel consulting service or temporary help service, as the two terms are described in G.S. 95-47.1(16)f., that operates in North Carolina shall certify annually to the Department of Labor on a form prescribed by the Commissioner that the service:

- (1) Operates on a one hundred percent (100%) employer fee paid basis;
- (2) Requires no applicant placement contract; and
- (3) Has no recourse against an applicant for a fee under any circumstances. (1989, c. 414, s. 3.)

§§ 95-47.16 through 95-47.18. Reserved for future codification purposes.

N.C. ADMINISTRATIVE CODE
TITLE 13 – DEPARTMENT OF LABOR
CHAPTER 17 – PRIVATE PERSONNEL SERVICES

(Revised as of August 1, 2004)

SECTION .0100 – PRIVATE PERSONNEL SERVICES REGULATIONS

13 NCAC 17.0101 DEFINITIONS

As used in G.S. 95, Article 5A and this Chapter, unless the context clearly requires otherwise:

- (1) "Accept an employer's offer of employment," as used in G.S. 95-47.1(1), means to consent orally or in writing to take the job the employer is offering. This offer or acceptance may be made directly between the employer and the applicant or may be communicated through a representative of the private personnel service acting as the applicant's agent.
- (2) "Advertising" means any material or method used by a private personnel service for solicitation or promotion of business. This includes, but is not limited to, newspapers, radio, television, the internet, business cards, invoices, letterheads, or other forms that may be used in combination with the solicitation and promotion of business.
- (3) "Communication," as used in G.S. 95-47.1(4), means a written communication.
- (4) "Days" means calendar days.
- (5) "Division" means the Private Personnel Service Office of the North Carolina Department of Labor.
- (6) "Employer fee paid personnel consulting service" means any business that consults with employers in locating and placing employees where the sole obligation for the placement fee is assumed by the employer in all circumstances and the applicant is never obligated for the fee, directly or indirectly, even if the applicant quits or is terminated for cause.
- (7) "Employment agency" or "agency" means a private personnel service as defined in G.S. 95-47.1(16).
- (8) "Existing licensed business," as used in G.S. 95-47.2(f), means any existing licensed private personnel service or job listing service.
- (9) "Indirectly" being responsible for a fee to a private personnel service includes the applicant paying, or repaying, any portion of the fee paid to the private personnel service by the employer or any other person.
- (10) "Material information," as used in G.S. 95-47.2(d)(3)a, and the rules in this Section means any facts or knowledge that are relevant to operating a private personnel service.
- (11) "Meeting between an employer and an applicant" as used in G.S. 95-47.1(10) and the rules in this Chapter includes but is not limited to interviews in person, conducted by telephonic conference, video conference, or other electronic means.
- (12) "Operate" means to engage in the business of a private personnel service within the State of North Carolina. Within the State of North Carolina includes, but is not limited to, any of the following:
 - (a) Property, offices, or employees located in North Carolina;
 - (b) Use of a North Carolina phone number;

- (c) Use of a North Carolina address;
 - (d) Interviewing applicants in North Carolina;
 - (e) Placing applicants in North Carolina;
 - (f) Collecting money from applicants in North Carolina;
 - (g) Directing North Carolina applicants to interviews;
 - (h) Directing applicants to interviews with North Carolina employers; and
 - (i) Advertising in North Carolina.
- (13) "Partnership" and "corporation," when used in the context of owners of a private personnel service, mean any similar state-chartered legal entity. Examples of similar state-chartered legal entities include, but are not limited to, limited liability partnerships and limited liability corporations.
- (14) "Person who uses or attempts to use the services of a private personnel service" as used in G.S. 95-47.1(2) includes applicants without regard to how or by whom the contact between the applicant and the private personnel service is initiated.
- (15) "Premises," as used in G.S. 95-47.2(d)(3)c., means the property occupied by any owner or manager of the private personnel service where the business of the private personnel service is conducted. Two businesses occupy the same premises if a person can move from one to the other without traveling through a public area available to non-customers.
- (16) "Private personnel service industry" means all private personnel services that are or may be required to be licensed to operate in the State of North Carolina.
- (17) "Refund policy" means a voluntary refund policy adopted by the private personnel service. It does not mean the fee reimbursement provisions mandated by G.S. 95-47.3A and such a fee reimbursement shall not be considered as a refund policy which would trigger operation of the "Termination of Employment" provisions under Rule .0107(f)(6) of this Section.
- (18) "Responsible for the operation" means to conduct the daily administrative functions required to direct and control the business. This includes, but is not limited to, current and ongoing knowledge and oversight of the following: all placement functions; hours the business operates; hiring, supervision, and dismissal of the business' personnel; the finances and financial records of the business; advertising; job orders; compliance with G.S. 95, Article 5A; and the needs of applicants and employers who work with the business to receive placement and hiring assistance. It further means that the person is available during working hours to answer questions and respond to the needs of applicants, employers, the business' own employees, and the Private Personnel Service Office.
- (19) Except in G.S. 95-47.2(d)(1), in G.S. 95-47.2(d)(3)b.2 and in G.S. 95-47.2(d)(3)b.3, "rules", "regulations", or "rules or regulations" as used in G.S. 95, Article 5A and in this Chapter refer to administrative rules adopted by the Department of Labor pursuant to G.S. 95, Article 5A and G.S. 150B.
- (20) "Temporary help service" means any business which employs persons whom it assigns to assist its customers. The employer-employee relationship exists between the temporary help service and the employee. If a temporary help service ever charges the employee a fee for help in securing employment with an employer other than itself, then the service is a private personnel service.

History Note: Authority G.S. 95-47.9;

*Eff. February 27, 1995;
Amended Eff. April 1, 2001.*

13 NCAC 17 .0102 LICENSING PROCEDURES

(a) Each application for a private personnel service license shall be made on forms prescribed and furnished by the Commissioner and shall contain the following information in addition to the information required by G.S. 95-47.2:

- (1) The proposed mailing address, and telephone number of the private personnel service;
- (2) Four personal or business references who are not related to or currently employed by the applicant;
- (3) Whether the private personnel service will be affiliated in any way with a loan agency or collection agency;
- (4) Whether the private personnel service will operate under a franchise agreement;
- (5) Whether the applicant, owner, officer, director or manager ever made an application for a license to operate a private personnel service in North Carolina or elsewhere;
- (6) Whether the applicant, owner, officer, director or manager ever had a license revoked, suspended, or refused, or has been subjected to any disciplinary action by any governmental body;
- (7) Whether the applicant, owner, officer, director or manager has ever been convicted of a crime other than parking violations and misdemeanor traffic offenses;
- (8) Whether the applicant, owner, officer, director or manager of the service has any additional ownership investment interest in other businesses;
- (9) The name and address of a newspaper of general circulation in the area where the applicant now resides;
- (10) A copy of all contracts and forms to be used with applicants;
- (11) A copy of the fee schedule and a copy of the refund policy (if applicable) used with persons seeking employment and employers;
- (12) If the applicant is a corporation, a copy of the Articles of Incorporation;
- (13) If the applicant is a partnership, a copy of the Partnership Agreement;
- (14) The Surety Bond required by G.S. 95-47.2(j); and
- (15) Any other names, aliases, assumed business names, trade names, or doing business as ("DBA") names under which each applicant has operated.

(b) Assumed Name or Assumed Business Name. If the private personnel service has filed an assumed name with the register of deeds in its county, as required by North Carolina law (G.S. 66-68), the owner must notify the Division in writing of the assumed name. This notification shall be considered a request for an amendment to the application.

(c) Release of Information Authorization:

- (1) By applicant:
 - (A) Each applicant for a private personnel service license shall sign a Release of Information authorizing the Commissioner to conduct a personal background investigation for purposes of determining the applicant's suitability to operate a private personnel service.
 - (B) The release shall be executed before a notary public.
- (2) By officer, director or manager:

- (A) The officer, director or manager of a private personnel service, not covered by Subparagraph (d)(1) of this Rule, shall sign a Release of Information authorizing the Commissioner to conduct a criminal background investigation for purposes of determining the suitability of that person to operate a private personnel service.
- (B) The release shall be executed before a notary public.
- (d) Interview with the Division. Each individual applicant shall come to the Division for an interview as part of the application process.
- (e) Right to Protest. Individuals have a right to protest the issuance of a license in accordance with G.S. 95-47.2(d)(1):
 - (1) In determining whether the protest is of such a nature that a hearing should be conducted and for a cause on which denial of a license may properly be based, the Commissioner will look to the reasons for denying a license found in G.S. 95-47.2(d)(3) and G.S. 95-47.2(e).
 - (2) The hearing shall be conducted in accordance with the provisions of G.S. 150B-38 through G.S. 150B-42.
- (f) Denial of License. Upon completion of the investigation, the Commissioner shall determine whether or not a license should be issued. In addition to the reasons for denial in G.S. 95, Article 5A, a license shall be denied if the applicant has failed to submit all of the necessary information and paperwork which is described under Licensing Procedures in Rule .0102 of this Chapter.
- (g) Notice of Approval. If the Commissioner approves a private personnel service license, the applicant shall be notified and the license shall be issued.
- (h) Notice of Opportunity to Withdraw:
 - (1) If the application for a license is incomplete, the applicant shall be notified by telephone of this fact at least seven days prior to the end of the 30 day investigative period. The applicant may either complete the application within that seven days or withdraw the application.
 - (2) If the applicant elects to withdraw the application, the Division will deem any supporting documents which the Division has obtained, such as the criminal background check and references, current for an additional 30 days within which time the applicant may refile the application.
 - (3) Failure to withdraw an incomplete application (one that omits material information) before the end of the original 30 day investigative period shall result in the denial of a private personnel service license. However, the applicant may re-apply.
- (i) Notice of Denial. If the Commissioner denies a private personnel service license, the applicant shall be notified of this fact by certified mail sent to his or her last known address.

*History Note: Authority G.S. 95-47.2; 95-47.3; 95-47.9;
Eff. February 27, 1995.*

13 NCAC 17 .0103 DURATION AND RENEWAL OF LICENSE

- (a) Period Issued. A license to operate a private personnel service shall be valid for one year from the date of issuance, which is the date that appears on the actual license.
- (b) Renewal:
 - (1) At least 60 days prior to the date of expiration, the Commissioner shall notify each licensee in writing of the expiration of the license.

- (2) Renewal applications, completed on a form provided by the Private Personnel Service Office, shall be submitted to the Private Personnel Service Office at least 30 days prior to the expiration date of the license. The renewal application shall be executed before a notary public and shall include all material changes in the operation of the private personnel service from the latest application for licensure or renewal or shall certify that no such changes have occurred.
- (3) The Commissioner shall deny the application for renewal of license if any grounds exist that would have caused denial of the original license application or if the private personnel service has any unrectified violations of G.S. 95, Article 5A or the rules in this Section.

*History Note: Authority G.S. 95-47.2; 95-47.9;
Eff. February 27, 1995;
Amended Eff. April 1, 2001.*

13 NCAC 17 .0104 CHANGE OF PRIVATE PERSONNEL SERVICE STATUS

(a) Change of Private Personnel Service Name:

- (1) Licensees desiring to change the name of their private personnel service must give the Commissioner 30 days advance written notice.
- (2) In addition, the licensee must obtain a rider to the surety bond showing the new name and submit it to the Division before the new name can become final.
- (3) In addition, when a change in name requires a new filing of an assumed business name, a copy of the new filing must be provided to the Commissioner before the new name can become final.
- (4) A change in the name does not require a new license, only an amendment to the current license.
- (5) After completion of the requirements in this Paragraph, the licensee shall return his current license to the Division for such amendment and reissuance.

(b) Change of Private Personnel Service Location:

- (1) Licensees desiring to change the location of their private personnel service must give the Commissioner 30 days advance written notice.
- (2) A change in the location of the private personnel service does not require a new license, only an amendment to the current license.
- (3) The licensee shall return his current license to the Division for such amendment and reissuance.

(c) Assignment/Transfer of License:

- (1) Licensees desiring to assign or transfer their license to a new owner must give the Commissioner 30 days advance written notice.
- (2) In addition, the proposed new owner must file an application for license with the Commissioner and obtain a new surety bond.
- (3) After completion of the requirements in this Paragraph, the Commissioner shall issue a temporary license in accordance with G.S. 95-47.2(i).

(d) Relinquishment of License. Licensees desiring to relinquish their license must:

- (1) Notify the Commissioner in writing;
- (2) Return the actual license to the Division; and
- (3) Comply with the provisions in G.S. 95-47.5 and Rule .0109 of this Chapter.

(e) Cancellation of the Bond by the Surety:

- (1) Upon receipt of a Notice of Cancellation of the bond by the surety, the Commissioner shall advise the licensee in writing of such cancellation. The Division must receive a new bond prior to the effective date of cancellation of the existing bond.
 - (2) If a new bond is not received prior to the cancellation of the existing bond, the Commissioner shall advise the licensee in writing that the Commissioner will seek injunctive relief to suspend operation of the private personnel service under G.S. 95-47.10 pending receipt of the surety bond required by G.S. 95-47.2(j).
 - (3) Failure to maintain the surety bond at all times shall be grounds for revocation of the license by the Commissioner.
- (f) Disassociation of Manager:
- (1) Should any manager become disassociated with a licensee for any reason, the licensee shall notify the Commissioner of this fact within 10 days and shall at that time designate another manager unless there was more than one manager and the remaining manager(s) will be managing the private personnel service without replacement of the disassociating manager.
 - (2) A newly designated manager shall sign a Release of Information authorization pursuant to Rule .0102 of this Chapter.
 - (3) Upon completion of the investigation and approval of the newly designated manager, the licensee shall return his current license to the Division for such amendment and reissuance.

*History Note: Authority G.S. 95-47.2; 95-47.9;
Eff. February 27, 1995.*

13 NCAC 17 .0105 FEE REIMBURSEMENT

This Rule addresses requests for fee reimbursement by an applicant who accepts employment, the compensation for which is based, in whole or in part, on commission and who pays a fee based on the commission-based earnings.

- (1) Complaints Against Employers:
 - (a) Filing the Complaint. Any applicant using a private personnel service desiring to file a complaint involving a fee reimbursement from an employer in accordance with G.S. 95-47.3A(a) shall file a written complaint with the Commissioner, signed before a notary public. The complaint shall be filed either within 60 days of the date last employed or after one year of employment, whichever is earlier.
 - (b) Contents of the Complaint. The complaint shall state the name and address of the employer complained against, the licensee's name and address, and shall fully detail the nature of the complaint.
 - (c) Copy of Complaint to Employer. When a complaint is filed, the Commissioner shall serve a copy of the complaint upon the employer complained against either personally, by certified mail, by overnight express, or faxed as long as the employer acknowledges receipt. Likewise, the Commissioner shall send a copy of the complaint by the same means to the licensee responsible for making the placement. The employer and the licensee shall respond to the complaint within 10 days of the receipt of the complaint. The response shall include copies of all written receipts and agreements which either the employer or the licensee

has in its possession concerning the particular complaint and other material as requested by the Division.

- (2) Complaints Against Private Personnel Services:
 - (a) Filing the Complaint. Any applicant using a private personnel service desiring to file a complaint involving a fee reimbursement where the private personnel service is responsible for any potential fee reimbursement in accordance with G.S. 95-47.4(h) shall file a written complaint with the Commissioner, signed before a notary public. The complaint shall be filed either within 60 days of the date last employed or after one year of employment, whichever is earlier.
 - (b) Contents of the Complaint. The complaint shall state the name and address of the licensee complained against and shall fully detail the nature of the complaint.
 - (c) Copy of Complaint to Licensee. When the complaint is filed, the Commissioner shall serve a copy of the complaint upon the licensee complained against either personally, by certified mail, by overnight express, or faxed as long as the licensee acknowledges receipt. The licensee shall respond to the complaint within 10 days of the receipt of the complaint. The response shall include copies of all written receipts and agreements which the licensee has in its possession concerning the particular complaint and other material as requested by the Division.
- (3) Investigation:
 - (a) The Commissioner shall investigate the complaint to determine whether the applicant is entitled to a fee reimbursement.
 - (b) If the employer is liable for a potential fee reimbursement, the burden of proof is on the employer to show that a statement by the employer in the licensee's written job order of potential or anticipated commission-based earnings is realistic under the circumstances.
 - (c) If the private personnel service is liable for a potential fee reimbursement, the burden of proof is on the private personnel service to show that a statement in the licensee's written job order of potential or anticipated commission-based earnings is realistic under the circumstances.
 - (d) In addition, the Commissioner may consider such factors including, but not limited to, the following:
 - (i) What compensation other people in the same job as the applicant are making or have made;
 - (ii) The market and economy;
 - (iii) Competition.The Commissioner shall look at these factors in the context of the complainant's job training, relative experience, number of hours worked, number of calls made in person or over the phone, and a determination of the complainant's ability and effort to do the job.
- (4) Determination. The Commissioner shall make a determination within 60 days from the date of the filing of the complaint and shall notify both the complainant, and either the licensee or the employer, as is appropriate, of the determination.
- (5) Hearing:

- (a) Request for Hearing. Either party may file a written request for a hearing before the Commissioner within seven days from the receipt of notice of the Commissioner's determination.
- (b) Notice of Hearing. Notice of the hearing shall be given in accordance with G.S. 150B-38.
- (c) Conduct of Hearing.
 - (i) Parties may appear in their own behalf or be represented by counsel. When an attorney represents a party, he or she shall advise the Commissioner of his or her name, address and telephone number in advance of the hearing as soon as practicable after assuming representation.
 - (ii) All witnesses at the hearing shall testify under oath or affirmation.
 - (iii) The Commissioner may issue subpoenas requiring the attendance and testimony of witnesses and take depositions as deemed necessary.
 - (iv) Within 30 days after the conclusion of a hearing, the Commissioner shall render a decision in writing. Copies of the Commissioner's findings and order shall be sent by certified mail to the parties.
 - (v) A party aggrieved by the Commissioner's decision may seek a review of the decision in accordance with G.S. 150B-43 through G.S. 150B-52.

*History Note: Authority G.S. 95-47.3A; 95-47.9;
Eff. February 27, 1995.*

13 NCAC 17 .0106 JOB ORDERS

- (a) Bona Fide Job Order Required. No private personnel service shall offer or hold itself out as being able to secure a specific position of employment for an applicant without having a bona fide job order. A bona fide job order is one which:
 - (1) Is recorded on a form;
 - (2) Contains, at a minimum, the following:
 - (A) Name and title of the person communicating the job order to the private personnel service;
 - (B) Date recorded or last verified, whichever is most recent;
 - (C) Name and address of the employer;
 - (D) Job title and requirements;
 - (E) Wages or salary, including any bonus that is included in the stated anticipated annual earnings;
 - (F) Anticipated hours worked;
 - (G) Any compensation that is based on commission;
 - (H) Whether it is the applicant or the employer that is responsible for the placement fee; and
 - (I) Name of the person recording the job order.
- (b) Private Personnel Service Responsible for Explaining Conditions of Employment. At a minimum, the private personnel service shall fully disclose to the applicant all of the required information in Subparagraph (a)(2) of this Rule. The private personnel service shall ask the

employer for the following information, at a minimum, and shall disclose it to the applicant if received from the employer:

- (1) Name and title of person to whom the applicant is to report for an interview;
- (2) Requisite education and experience; and
- (3) All known conditions of employment, including regular and overtime wages, commissions, benefits, hours, work schedule, whether overtime is expected, whether overtime is included in the expected annual earnings and actual days worked per week.

(c) Disclosure requirements. Disclosure required by this Rule shall occur prior to the applicant's interview with the employer. The private personnel service shall base its disclosure upon documents received from the employer or conversations with the employer which shall be reduced to writing. Disclosure shall be accurate to the best of the private personnel service's knowledge.

(d) Commission-based Compensation:

- (1) If an applicant is to be compensated, in whole or in part, by commissions and the employer will be responsible for a potential fee reimbursement, then the job order must also be signed by the employer.
- (2) A private personnel service may, however, forego the written job order requirement if it is willing to assume liability for a potential fee reimbursement in accordance with G.S. 95-47.4(f) and G.S. 95-47.4(h)(2).

(e) Job Order Verification. At least once a month, the private personnel service shall verify job orders for which applicants are referred or for which advertisements are placed.

*History Note: Authority G.S. 95-47.3A; 95-47.6; 95-47.9;
Eff. February 27, 1995;
Amended Eff. April 1, 2001.*

13 NCAC 17 .0107 CONTRACTS

(a) Types of Contracts. There must be a contract for any service if a fee is charged to the applicant. An applicant may enter into either or both of the following types of contracts with a private personnel service:

- (1) A contract for employment placement with payment of a fee contingent on acceptance of employment;
- (2) A fee contract for services including, but not limited to, career and occupational counseling, resume and letter writing, networking assistance, interviewing techniques, job prospecting and salary negotiations.

(b) Applicant to Receive Copy of Contract. At the time of execution an applicant shall receive a copy of the contract signed by the applicant and the private personnel service.

(c) Name of Applicant. The applicant's name shall be typed or printed adjacent to the place for the applicant's signature.

(d) Contract for Employment Placement. All contracts for employment placement with an applicant shall set forth in clear and unambiguous terms the respective rights and obligations of the applicant and the private personnel service and shall include the following:

- (1) A statement of the fees to be charged the applicant at various salary levels;
- (2) If compensation is based, in whole or in part, on commissions, a description of how the private personnel service determines its fees;
- (3) An explanation of when the applicant becomes obligated to pay a fee;

(4) Where the private personnel service has no refund policy, yet compensation is based, in whole or in part, on commissions, the private personnel service must give further information to the applicant in either the contract or a supplement to the contract that is also executed by the applicant and the private personnel service (i.e., an addendum on the closing statement). It shall inform both the applicant and the employer in writing of the provisions of G.S. 95-47.3A governing fee reimbursements from employers;

(5) If the private personnel service chooses to be liable for any potential fee reimbursement under G.S. 95-47.3A, the service must provide to the applicant a clear description of how it provides the fee reimbursement. This description must be provided in either the contract or a supplement to the contract that is also executed by the applicant and the private personnel service (i.e., an addendum on the closing statement). The following is sample language that will fulfill this requirement:

REIMBURSEMENTS. If the applicant pays a service fee which is based, in whole or in part, on commissions and the applicant fails to earn at least 80 percent of the compensation amount stated by the employer in the job order, the applicant may file a written complaint with the Department of Labor in accordance with G.S. 95-47.3A. (Name of private personnel service) shall only pay a reimbursement within 10 days of receiving a written final determination from the Department of Labor that a reimbursement is due.

(e) Contract for Other Services. All contracts for other services with an applicant shall include the following:

- (1) A statement of what services will be provided and the fees for the various services;
- (2) A statement that the applicant becomes obligated to pay a fee once the service(s) is/are provided;
- (3) A statement that the private personnel service does not guarantee that the applicant will obtain employment as a result of its services.

(f) Definitions. If the following undefined 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 begins work or agrees to begin work on a fixed date at an agreed remuneration for a specific employer.
- (2) Placement or Employment - All placements or employment shall be considered to be of an indefinite term unless clearly disclosed in the closing document.
- (3) Fee or Service Charge - The amount charged the applicant for any services rendered by the private personnel service.

(A) A fee or service charge for employment placement is due:

- (i) When the applicant accepts employment as a result of a referral to an employer by the private personnel service within one year after the referral.
- (ii) When the applicant fails to secure or does not accept the position to which the applicant was originally referred, but accepts another position with the employer or with another employer to whom the first employer refers the applicant within one year as a result, directly or indirectly, of the original referral.

(B) A fee or service charge for any other service is due after the service is rendered.

- (4) Fee Schedule - A percentage or set fee on file with, and clearly stated in a manner approved by, the Commissioner for all fees to be charged the applicant.
- (5) Base Salary or Earnings - A fixed compensation for services paid to a person on a regular basis.
- (6) Termination of Employment:
 - (A) Termination by employer - An employee may be considered at fault for the following reasons (also includes termination for cause, discharge for just cause, and similar language):
 - (i) Willful absence from duty;
 - (ii) Having been convicted, subsequent to his or her employment, of a crime reflecting upon his or her employment;
 - (iii) Being impaired by alcohol or a controlled substance on the job;
 - (iv) Being disorderly or insubordinate on the job;
 - (v) Violating written company policies or rules;
 - (vi) Misrepresenting or withholding, without the knowledge of the licensee, any information regarding the applicant's ability to perform an essential core function with or without an accommodation.
 - (B) Termination by employee - An employee has "just cause" (also includes reasonable cause, good cause, justification, and similar language) for voluntarily terminating employment within the length of time upon which the fee was based and is due a prorated refund of the fee (if the private personnel service has a refund policy) when the conditions of employment were either knowingly misrepresented or withheld from the applicant by the private personnel service 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:
 - (i) Probationary or trial periods;
 - (ii) Bankruptcy or cessation of operation by the employer;
 - (iii) Failure to pay wages when due;
 - (iv) Conditions at the place of employment which are injurious to the employee's health or safety;
 - (v) Change in remuneration or lower status than was agreed to when the position was accepted.

In calculating the prorated refund, the length of time upon which the fee was based will be determined in days and that number of days will be divided into the fee to calculate the fee paid per day. Then the amount of the refund will be calculated by multiplying the number of days worked by the fee paid per day and subtracting the result of that multiplication from the total fee paid. For example, the calculation would be as follows: the fee paid by the applicant was three thousand six hundred and fifty dollars (\$3,650) and the length of time upon which the fee was based was one year (beginning January 1) so the fee paid per day was ten dollars (\$10); the applicant worked January 1 through June 30 or 181 days. The number of days worked times the fee paid per day is one thousand eight hundred and ten dollars (\$1,810) which is subtracted from the fee three thousand six hundred and fifty dollars (\$3,650) for a refund due of one thousand eight hundred and forty dollars (\$1,840).

(g) Refund Policy. A private personnel service shall abide by the refund policy (if any) stated on its contract by paying any refund due under the terms of the contract within 15 days of:

- (1) Receiving a request from any applicant; or
- (2) If the refund is in dispute, upon receiving a written final determination that a refund is due. Such determination may be issued by the Commissioner, an arbitrator, or a court of law.

*History Note: Authority G.S. 95-47.3; 95-47.4; 95-47.9;
Eff. February 27, 1995.*

13 NCAC 17 .0108 RECORDS

- (a) Job Orders or Job Specifications. Every private personnel service shall maintain records of job orders or job specifications for two years from the date on which the job order was last verified.
- (b) Licensees Going Out of Business. If a licensee goes out of business records must be maintained pursuant to this Rule. Those records must be available to the Commissioner and the licensee must inform the Commissioner in writing as to where its records will be kept.

*History Note: Authority G.S. 95-47.5; 95-47.9;
Eff. February 27, 1995.*

13 NCAC 17 .0109 ADVERTISING

- (a) Bona Fide Job Order Required. No licensee shall publish or cause to be published any advertisement soliciting persons to register for a specific job unless the licensee has on file a bona fide job order covering all known conditions of employment set forth in the advertisement.
- (b) False or Misleading Advertisements. No licensee shall circulate any false or misleading information by advertisements or make any statements known to be false to any applicant or employer.
- (c) Advertising of Salaries. All salaries, where the dollar amount is advertised, must be substantiated by the job order.

*History Note: Authority G.S. 95-47.6; 95-47.9;
Eff. February 27, 1995.*

13 NCAC 17 .0110 PROHIBITED ACTS

A private personnel service shall not engage in any of the following activities or conduct:

- (1) Accept an advance fee from an applicant for any of its services;
- (2) Coerce an applicant into accepting employment by applying or using duress, undue influence, fraud or misrepresentation.

*History Note: Authority G.S. 95-47.6; 95-47.9;
Eff. February 27, 1995.*

13 NCAC 17 .0111 PENALTY

Any fine levied pursuant to G.S. 95-47.9(d) shall be in the amount of two hundred and fifty dollars (\$250.00).

*History Note: Authority G.S. 95-47.9;
Eff. February 27, 1995.*

SECTION .0200 - GENERAL PROVISIONS

13 NCAC 17 .0201 ACCEPTING FEES FROM APPLICANT AND EMPLOYER

If a private personnel service accepts a fee in a single placement from both an applicant and an employer it shall disclose that fact and the fact that it does not represent the applicant exclusively to the applicant. The required disclosures shall be in writing.

*History Note: Authority G.S. 95-47.2; 95-47.6;
Eff. April 1, 2001.*

13 NCAC 17 .0202 ACTIVITIES OF BUSINESS CONSIDERED TO BE A PRIVATE PERSONNEL SERVICE

(a) A business that engages in the activities below, and is not covered by G.S. 95-47.1(16)a (16)f; shall be considered to be a private personnel service if it:

- (1) operates in North Carolina;
- (2) operates for profit or is a nonprofit business that charges a fee;
- (3) holds, or may hold, the applicant liable for a direct or indirect fee to the business; and
- (4) performs one of the following:
 - (A) secures employment for the applicant with any employer other than itself; or
 - (B) by any form of advertising, holds itself out to applicants as able to:
 - (i) secure employment with any employer other than itself; or
 - (ii) provide information or service of any kind purporting to promote, lead to, or result in employment for the applicant with an employer other than the business itself.

(b) "Secure [or secures] employment for the applicant," as used in Items (a)(4)(A) and (a)(4)(B)(i) of this Rule means find work or a job in any location or for any duration. Examples of a business that secures employment for an applicant may include: employment agency; staffing service; model or talent agency; job listing service; escort service; computer consultant; nurses pool; nurses service; medical care service such as respiratory therapist or home health care agency; companion care service; home, pet, or baby sitting service; nanny or au pair agency; outplacement service; head hunter; retained search business; contingency search business; employee leasing service; career coach; career consultant; or temporary service.

(c) Examples of activities that "provide information or service of any kind purporting to promote, lead to, or result in employment for the applicant with an employer other than the business itself" as used in Subpart (a)(4)(B)(ii) of this Rule shall include, but not be limited to, the following:

- (1) recommending a specific potential employer to an applicant;
- (2) preparing a résumé or cover letters to be sent to an employer suggested or recommended by the business;
- (3) setting up an appointment on behalf of an applicant, or otherwise making contact with a prospective employer on behalf of an applicant;
- (4) counseling an applicant on techniques for job search, interview, salary or benefits negotiations, or any other job seeking methodology to be used with a potential employer suggested or recommended by the business;
- (5) advertising to applicants that the business can help the applicant find employment. Examples of such advertising include: "job hunting?" "help people find a job;"

"open the floodgates to employment opportunity;" "take care of the pragmatic details of career research" or "take care of creation of a client's personal marketing materials" where the business suggests specific potential employers; provides access to "inside job leads," "unpublished information," or the "hidden job market;" or provides "outplacement;" or

(6) conducting industry research for an applicant in order to determine specific potential employers.

(d) The name of the business, or description of services the business offers, does not control whether the Commissioner finds the service to be a private personnel service.

*History Note: Authority G.S. 95-47.1; 95-47.4; 95-47.6;
Eff. April 1, 2001.*

13 NCAC 17 .0203 RESERVED FOR FUTURE CODIFICATION

13 NCAC 17 .0204 REVIEW OF LICENSEE'S RECORDS

In matters relating to complaints, licensure and re-licensure, the license applicant or private personnel service shall permit the Commissioner to inspect records required by G.S. 95, Article 5A and the rules in this Chapter.

*History Note: Authority G.S. 95-47.2; 95-47.3A; 95-47.5; 95-47.6; 95-47.8; 95-47.9; 95-47.14;
95-47.15;
Eff. April 1, 2001.*

13 NCAC 17 .0205 DISCLOSURE OF FINANCIAL RELATIONSHIPS

Unless clearly disclosed in writing in advance, the private personnel service shall not, directly or indirectly, receive a fee from a collection agency (as defined in G.S. 58-70-15) or a loan agency (as defined in G.S. 105-88).

*History Note: Authority: G.S. 95-47.2; 95-47.3; 95-47.3A; 95-47.4; 95-47.6; 95-47.9;
Eff. April 1, 2001.*

N.C. GENERAL STATUTES
CHAPTER 95 – DEPARTMENT OF LABOR
ARTICLE 5B - REGULATION OF JOB LISTING SERVICES

(Revised as of August 1, 2004)

§ 95-47.19. Definitions.

Definitions of terms used in this Article shall be the same as in Chapter 95, Article 5A (Regulation of Private Personnel Services), with the words "job listing service" substituted, where appropriate, for the words "private personnel service." "Job listing service" means any business operated in the State of North Carolina by any person for profit which publishes, either orally or in writing, lists of specific positions of employment available with any employer other than itself or which holds itself out to applicants as able to provide information about specific positions of employment available with any employer other than itself, which charges a fee to any applicant for its services or purported services and which performs none of the activities of a private personnel service other than the publishing of job listings. "Job listing service" does not include:

- (1) Any educational, religious, charitable, fraternal or benevolent organization which charges no fee for services rendered in providing information about employment;
- (2) Any employment service operated by the State of North Carolina, the Government of the United States, or any city, county or town, or any agency thereof;
- (3) Any temporary help service that charges no fee for services rendered in providing information about employment;
- (4) Any newspaper of general circulation or other business engaged primarily in communicating information other than information about specific positions of employment and that does not purport to adapt the information provided to the needs or desires of an individual subscriber;
- (5) Employment offices that charge no fee to the applicant other than union dues and which are used solely for the hiring of employees under a valid union contract by the employers subscribing to this contract. (1979, c. 780, s. 2.)

§ 95-47.20. License required.

No person shall operate a job listing service in North Carolina without first obtaining a license from the Commissioner. A job listing service shall have a separate license for each location at which it maintains an office. (1979, c. 780, s. 2.)

§ 95-47.21. Violation of this Article; criminal and civil penalty.

Any person who violates the provisions of this Article by operating a job listing service without a valid license from the Commissioner shall be subject, under current regulations adopted pursuant to this Article, to criminal and civil penalties in the same amount and under substantially the same procedure as that provided under G.S. 95-47.9(e) for a person operating a private personnel service. (1979, c. 780, s. 2.)

§ 95-47.22. Licensing procedure.

(a) In addition to the requirements of subsection (b) of this section, the procedure, under rules adopted pursuant to this Article, for the issuance, denial and renewal of job listing service

licenses and other aspects of the licensing of job listing services by the Commissioner shall be substantially the same as that provided under Article 5A of this Chapter for the licensing of private personnel services.

(b) Before the Department may issue or renew a license under this Article, each licensee shall deposit with the Department a bond payable to the State of North Carolina and executed by a surety company duly authorized to transact business in this State. The bond shall be in the amount of twenty-five thousand dollars (\$25,000) and, if the job listing service terminates its business, shall be held by the Department until all refunds due applicants under this Article have been paid by the job listing service. (1979, c. 780, s. 2; 1993, c. 172, s. 1.)

§ 95-47.23. Enforcement.

Under regulations adopted pursuant to this Article, a job listing service may be issued a warning, citation or notice of violation, or may have its license revoked or suspended, or its licensee reprimanded, censured or placed on probation in substantially the same manner and under substantially the same procedure as that provided for a private personnel service under Article 5A of this Chapter. (1979, c. 780, s. 2.)

§ 95-47.24. Certain practices prohibited.

Under regulations adopted pursuant to this Article, a job listing service shall abide by provisions substantially the same as those provided under G.S. 95-47.6(7) (kickbacks), G.S. 95-47.6(9) (misrepresentation), and G.S. 95-47.2(d)(3)c. (loan or collection agencies) for a private personnel service. (1979, c. 780, s. 2; 1993, c. 172, s. 2.)

§ 95-47.25. Contracts; contents; approval.

A contract between a job listing service and an applicant shall be in writing, labeled as a contract, physically separate from any application form and made in duplicate, and shall include:

- (1) A clear explanation of the services provided and the amount of the fee;
- (2) In a type size no smaller than nine point, a statement that reads "I understand that _____ (name of job listing service) does not guarantee that I will obtain employment through its services. I understand that _____ (name of job listing service) does not refund fees for any reason," unless the job listing service agrees in the contract to refund to the applicant any fee the applicant paid to the job listing service if within three months of paying such a fee the applicant has not accepted an employment position listed in a publication of the job listing service;
- (3) A statement that the job listing service is not a private personnel service or employment agency, that no additional fee will be charged to the applicant upon acceptance of employment and that the job listing service will not set up interviews or otherwise arrange direct contacts between an employer and the applicant; and
- (4) A statement that the job listing service is licensed and regulated by the Commissioner and the address at which a copy of regulations governing job listing services may be obtained.

A copy of each contract form to be used with applicants shall be filed with the Commissioner. Until the job listing service receives written notification from the Commissioner that the form conforms to the requirements of this Article and regulations adopted hereunder, it shall not be used with applicants. A job listing service shall not accept a fee from any applicant before the applicant has read and received a copy of the contract. (1979, c. 780, s. 2.)

§ 95-47.26. Advertising and publication.

(a) In conducting any form of advertising, a job listing service shall identify itself by its business name and identify itself as a job listing service by using in the name or elsewhere in the advertising the term "job listing service."

(b) Prior to advertising or publishing information about an available job, a job listing service shall receive a job order and shall record the job order, the date it was received and the name of the employer representative or other business who gave the job order to the job listing service. No description or representation of an employment position shall be stated in any advertising or other publication, unless the information is included on the recorded job order for the position. Information about a single employment position shall not be used in more than one advertisement or listing in a single issue of any publication.

(c) A job listing service shall not publish or cause to be published any information which it knows or reasonably ought to know is false or deceptive or which it has no reasonable basis for believing to be true.

(d) In conducting any form of advertising, a job listing service shall not use the term "no fee" or any other term indicating that applicants will not be financially obligated to the job listing service. (1979, c. 780, s. 2.)

§ 95-47.27. Fee receipts.

A job listing service shall give every applicant from whom payment is received a receipt stating the name and address of the job listing service, the name of the applicant, the date and the amount of the payment. (1979, c. 780, s. 2.)

§ 95-47.28. Prohibited job listings.

A job listing service shall not publish information about a position of employment with an employer that the job listing service knows or has reason to know:

- (1) Has included false information in the job order; or
- (2) Has a strike or lockout at its business, unless the applicant is so informed in the publication; or
- (3) Is engaging in unlawful or immoral activity; or
- (4) Is in financial or other difficulty likely to lead to imminent cessation of operation, unless the applicant is so informed in the publication; or
- (5) Is an employer in which the job listing service or any owner of the job listing service has a financial interest greater than ten percent (10%), unless the applicant is so informed in the publication. (1979, c. 780, s. 2.)

§ 95-47.29. Records of the job listing service.

Each job listing service shall maintain and make available for inspection by the Commissioner the following records of the operation of the job listing service for the 18 months immediately preceding:

- (1) The job listing service's copies of all contracts executed with applicants;
- (2) Copies of all fee receipts;
- (3) Copies of all advertising and job lists published orally or in writing, indexed or attached to the recorded job order (including the date it was received and the name of the employer representative or other business who gave it) for each position advertised or listed, and records of the dates advertisements were run on publications issued; and

- (4) Any records required by the Commissioner under regulations adopted pursuant to this Article. (1979, c. 780, s. 2.)

§ 95-47.30. Administration of this Article.

This Article shall be enforced under the general supervision of the Commissioner, who shall have the same powers and duties in the enforcement of this Article as in the enforcement of Article 5A of this Chapter. (1979, c. 780, s. 2.)

§ 95-47.31. Review of job listing services.

After the Commissioner receives written statements from two or more applicants complaining that the applicant failed to obtain employment as a result of the services of a job listing service, the Commissioner may contact other applicants who have paid a fee to the job listing service for the purpose of determining what percentage of such applicants obtain employment as a result of the services of the job listing service. After gathering information from such applicants and following the requirements of due process, the Commissioner shall place the survey results in the public records. (1979, c. 780, s. 2.)

§ 95-47.32. Severability.

If any provision of this Article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications, and to this end the provisions of this Article are severable. (1979, c. 780, s. 2.)

N.C. ADMINISTRATIVE CODE
TITLE 13 – DEPARTMENT OF LABOR
CHAPTER 18 – JOB LISTING SERVICES

(Revised as of August 1, 2004)

13 NCAC 18 .0101 INTRODUCTION

To the extent that it is applicable, and with the words "job listing service" substituted for the words "private personnel service" where appropriate, this Chapter incorporates Chapter 17, including subsequent amendments and editions, by reference. Copies of Chapter 17 can be obtained at no cost from the Private Personnel Service Division, 4 West Edenton Street, Raleigh, North Carolina 27601, (919) 733-4895.

*History Note: Authority G.S. 95-47.19; 95-47.21; 95-47.22; 95-47.23; 95-47.24; 95-47.30;
Eff. January 1, 1996.*

13 NCAC 18 .0102 DEFINITIONS

As used in G.S. 95, Article 5B and this Chapter, unless the context clearly requires otherwise:

- (1) "Activities of a private personnel service," as used in G.S. 95-47.19, includes, but is not limited to, the following:
 - (a) producing a resume;
 - (b) setting up an appointment on behalf of an applicant, or otherwise making contact with a prospective employer on behalf of an applicant;
 - (c) testing an applicant's skill levels or aptitude for any type of work or profession; or
 - (d) counseling the applicant on techniques for job search, interview, salary or benefits negotiation, or any other job seeking methodology.
- (2) "Job order" means an oral or written communication from an employer authorizing a job listing service to include in the job listing service's list of jobs provided to applicants a position the employer currently has available.
- (3) Except as used in G.S. 95-47.19, "rules", "regulations", or "rules or regulations" as used in G.S. 95, Article 5B and in this Chapter refer to administrative rules adopted by the Department of Labor pursuant to G.S. 95, Article 5B and G.S. 150B.

*History Note: Authority G.S. 95-47.30;
Eff. January 1, 1996.*

13 NCAC 18 .0103 LICENSING PROCEDURES

An applicant for a license to operate a job listing service shall follow the procedures set out in 13 NCAC 17 for application for a license to operate a private personnel service, with the exception of the surety bond requirement. The surety bond required to be filed is required under G.S. 95-47.22(b).

*History Note: Authority G.S. 95-47.22; 95-47.30;
Eff. January 1, 1996.*

13 NCAC 18 .0104 SURETY BONDS

If a job listing service ceases business without completing its contracts with applicants or without paying refunds due under its contract with applicants, the North Carolina Department of Labor shall claim against the surety bond required under G.S. 95-47.22(b) on behalf of the affected applicants in order to make them whole under the contract. Refunds shall be in full to the extent the surety bond proceeds allow. Refunds shall be prorated between the applicants if the amount of the surety bond does not allow full refunds.

*History Note: Authority G.S. 95-47.9; 95-47.22; 95-47.30;
Eff. January 1, 1996.*

13 NCAC 18 .0105 CONTRACTS

- (a) A job listing service must have a contract with an applicant for any service if a fee is charged to the applicant.
- (b) At the time of execution an applicant shall receive a copy of the contract signed by the applicant and the job listing service.
- (c) The applicant's name shall be typed or printed in a clearly legible manner adjacent to the place for the applicant's signature.
- (d) The contract shall include the applicant's address, driver's license state and number, social security number, and phone number. This information shall be legible.
- (e) All job listing service contracts for use with an applicant shall set forth in clear and unambiguous terms the respective rights and obligations of the applicant and the job listing service.
- (f) Refund Policy. A job listing service shall abide by the refund policy (if any) stated on its contract by paying any refund due under the terms of the contract within 15 days of:
 - (1) Receiving a request from any applicant; or
 - (2) If the refund is in dispute, upon receiving a written final determination that a refund is due. Such determination may be issued by the Commissioner, an arbitrator, or a court of law.
- (g) The terms of the contract shall constitute the entire agreement between the job listing service and the applicant. Any ambiguities in the contract or in information provided to the applicant outside the contract shall be interpreted in favor of the applicant.
- (h) Job listing services shall not provide to applicants guarantees of any sort relating to the service provided.
- (i) If the job listing service represents to the applicant that the service may be frozen or suspended as the applicant desires, the terms and conditions of such shall be included in the contract and shall include a place for the dates of the suspension and resumption to be entered and signed for by the applicant and the authorized representative of the job listing service.

*History Note: Authority G.S. 95-47.25; 95-47.30;
Eff. January 1, 1996.*

13 NCAC 18 .0106 RECORDS

- (a) Job orders or Job Specifications. A job order may be taken over the telephone but must be reduced to writing before being used with applicants. Every job listing service shall maintain records of individual jobs orders for 18 months from the date on which the job was last published or used with applicants, whichever is later.

(b) Licensees Going Out of Business. If a licensee goes out of business records must be maintained pursuant to this Rule. Those records must be available to the Commissioner and the licensee must inform the Commissioner in writing as to where its records will be kept.

*History Note: Authority G.S. 95-47.29; 95-47.30;
Eff. January 1, 1996.*

13 NCAC 18 .0107 ADVERTISING

(a) Bona Fide Job Order Required. No licensee shall publish or cause to be published any advertisement of a position soliciting persons to contract with the job listing service unless the licensee has on file a bona fide job order covering all information set forth in the advertisement.

(b) False or Misleading Advertisements. No licensee shall circulate to any applicant or employer any false or misleading information by advertisement or make any statements known to be false.

(c) Advertising of Salaries. All salaries, where the dollar amount is advertised, must be substantiated by the job order.

*History Note: Authority G.S. 95-47.9; 95-47.26; 95-47.30;
Eff. January 1, 1996.*

13 NCAC 18 .0108 PROHIBITED ACTS

A job listing service shall not coerce an applicant into contracting with the job listing service by applying or using duress, undue influence, fraud or misrepresentation.

*History Note: Authority G.S. 95-47.4; 95-47.22; 95-47.30;
Eff. January 1, 1996.*

13 NCAC 18 .0109 REVIEW OF JOB LISTING SERVICES

(a) Job Listing Service to Aid North Carolina Department of Labor. A job listing service shall aid the Department of Labor in any review of the service pursuant to G.S. 95-47.31 by providing to the Department copies of all requested contracts with applicants.

(b) The Department of Labor shall post the results of any survey in the offices of the Private Personnel Service Division for a minimum of 30 days. In addition a copy of the results shall be supplied to any citizen who makes a request in writing.

*History Note: Authority G.S. 95-47.29; 95-47.30; 95-47.31;
Eff. January 1, 1996.*

13 NCAC 18 .0110 PENALTY

Any fine levied pursuant to G.S. 95-47.9(e) shall be in the amount of one hundred dollars (\$100.00) for each day the job listing service operates without a license, the penalty not to exceed a total of two thousand dollars (\$2000.00).

*History Note: Authority G.S. 95-47.9; 95-47.21; 95-47.30;
Eff. January 1, 1996*

N.C. GENERAL STATUTES

CHAPTER 126 – STATE PERSONNEL SYSTEM

**ARTICLE 6 – EQUAL EMPLOYMENT AND COMPENSATION OPPORTUNITY;
ASSISTING IN OBTAINING STATE EMPLOYMENT**

(Revised as of August 1, 2004)

§ 126-18. Compensation for assisting person in obtaining State employment barred; exception.

It shall be unlawful for any person, firm or corporation to collect, accept or receive any compensation, consideration or thing of value for obtaining on behalf of any other person, or aiding or assisting any other person in obtaining employment with the State of North Carolina; provided, however, any person, firm, or corporation that is duly licensed and supervised by the North Carolina Department of Labor as a private employment service acting in the normal course of business, may collect such regular and customary fees for services rendered pursuant to a written contract when such fees are paid by someone other than the State of North Carolina; however, any person, firm, or corporation collecting fees for this service must have been licensed by the North Carolina Department of Labor for a period of not less than one year.

Any person, firm or corporation collecting fees for this service must make a monthly report to the Department of Labor listing the name of the person, firm or corporation collecting fees and the person for whom a job was found, the nature and purpose of the job obtained, and the fee collected by the person, firm or corporation collecting the fee. Violation of this section shall constitute a Class 1 misdemeanor. (1977, c. 397, s. 1; 1993, c. 539, s. 933; 1994, Ex. Sess., c. 24, s. 14(c).)