

LCB File No. R089-04

**PROPOSED REGULATION OF THE OFFICE OF
THE LABOR COMMISSIONER**

NOTICE OF WORKSHOPS TO SOLICIT COMMENTS ON PROPOSED REGULATION

The Office of the Nevada Labor Commissioner is proposing the adoption of regulations pertaining to Chapter 611 of Nevada Administrative Code. Workshops have been scheduled for the following times and locations:

March 2, 2004
9:00 am to 11:00 am
Department of Business and Industry Hearing Room
788 Fairview Drive
Carson City, Nevada 89701

March 5, 2004
10:00 am to noon
Sawyer Building, Room 4401
555 E. Washington Ave.
Las Vegas, Nevada 89101

The purpose of the workshops is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations before drafting the proposed regulations:

- a. Employment relationship defined
- b. Premises
- c. Fee payments
- d. Internet-based services, job fairs, etc.
- e. Application process
- f. Residency requirements
- g. Bonding
- h. Independent contractor relationships
- i. Applicability to talent and modeling agencies
- j. Any other relevant items that members of the public suggest should be considered in a proposed regulation

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the Office of the Labor Commissioner, 675 Fairview Drive, Suite 226, Carson City, Nevada 89701 or by telephone at (775) 687-4850.

This Notice of Workshop has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Office of the Labor Commissioner
555 W. Washington Avenue Suite 4100
Las Vegas, NV

Carson City District Courthouse
885 E. Musser Street
Carson City, NV

Grant Sawyer State Office Building (Lobby)
555 E. Washington Avenue
Las Vegas, NV

Legislative Building
401 S. Carson Street
Carson City, NV

Office of the Labor Commissioner
675 Fairview Drive, Suite 226
Carson City, Nevada 89701

Washoe County Courthouse
75 Court St.
Reno, NV 89501

NOTICE OF HEARING AND INTENT TO ACT UPON REGULATIONS

The Office of the Nevada Labor Commissioner is proposing to adopt regulations pertaining to Chapter 611 of Nevada Administrative Code. Workshops were held on March 2, 2004 in Carson City, Nevada and on March 5, 2004 in Las Vegas, Nevada for the purpose of soliciting comments and information from interested persons prior to drafting proposed regulations. A copy of the proposed regulations are attached hereto.

A public hearing will be held on April 29, 2004 at 9:00 am at Nevada Department of Business and Industry Hearing Room located at 555 E. Washington Ave., Room 4412 and teleconferenced to the Nevada Legislature Building located at 400 S. Carson St., Room 3137, Carson City, Nevada. The purpose of the hearing is to solicit testimony from all interested persons regarding the adoption of regulations that pertain to Chapter 611 of NAC.

The due date for submitting written information will be May 11, 2004.

A copy of all materials relating to the proposal may be obtained by contacting the Office of the Labor Commissioner, 555 E. Washington Avenue, Suite 4100, Las Vegas, NV 89101 or by calling (702) 486-2650.

This Notice of Hearing and Intent to Act upon Regulations has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

Office of the Labor Commissioner
555 W. Washington Avenue Suite 4100
Las Vegas, NV

Carson City District Courthouse
35 E. Musser Street
Carson City, NV

Grant Sawyer State Office Building (Lobby)
555 E. Washington Avenue
Las Vegas, NV

Legislative Building
401 S. Carson Street
Carson City, NV

Office of the Labor Commissioner
675 Fairview Drive, Suite 226
Carson City, Nevada 89701

State of Nevada Bradley Building
2501 Sahara Avenue
Las Vegas, NV

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment.

Regulations are needed to establish some definitions and policies concerning the regulation of private employment agencies in Nevada. The agency has relied on statutory interpretation in this area, but has never undertaken steps to codify the interpretations in regulation form.

2. Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.

Subjects involved include:

- a. Definitions of "day" and "employment";

- b. Requirements for licenses for private employment agencies;
- c. Fees for placements by private employment agencies;
- d. Business premises; and
- e. Bonding

3. The estimated economic effect of the regulation on the businesses which it is to regulate and on the public.

a. Adverse effects: Increase in fee payable to Nevada Highway Patrol for criminal background checks from \$21 to \$45. This increase is due to the higher amount charged by the Nevada Highway Patrol to do criminal background checks on a nationwide basis through the NCIC system.

b. Beneficial effects: There would be a potential reduction in transaction, licensing, and bonding costs to businesses that would no longer be subject to regulation. The number of persons subject to the criminal background checks would be reduced by 60-75%.

c. Immediate effects: The elimination of licensing requirements for businesses that should not have been subject to regulation.

d. Long term effects: There will be more certainty as to who is required to be licensed, what they can charge for their services, and a streamlining of the application process.

4. The estimated cost to the agency for enforcement of the proposed regulation.

It is not anticipated that the agency will see any increased costs as a result of these changes.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

The proposed regulations would not duplicate the regulations of any other state or federal agency.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

The proposed regulations are not required pursuant to federal law.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

The proposed regulations are not more stringent than federal regulations governing the same activities.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

The proposed regulation increases the existing fee for criminal background checks.

Persons wishing to comment upon the proposed action of Office of the Labor Commissioner may appear at the scheduled hearing or may address their comments, data, views, or arguments, in written form, to Terry Johnson, Nevada Labor Commissioner, 555 E. Washington Avenue Suite 4100, Las Vegas, Nevada 89101. Written submissions must be received by the Labor

Commissioner on or before **May 11, 2004**. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Labor Commissioner may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be adopted will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be adopted will be available at the Labor Commissioner's website located at www.laborcommissioner.com, at the offices of the Labor Commissioner, located at 555 E. Washington Avenue, Suite 4100, Las Vegas, Nevada and 675 Fairview Drive, Suite 226, Carson City, Nevada, respectively, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

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Las Vegas, NV

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Carson City, NV

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**PROPOSED REGULATION OF THE OFFICE OF
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EXPLANATION – Language that is *italicized* is new.

AUTHORITY: NRS 611.023; NRS 607.160(1)

Section 1. *Chapter 611 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.*

Sec. 2. *Definitions.*

a. “Day” means a calendar day unless otherwise specified by statute or regulation and includes any portion thereof.

b. “Employment” means the establishment of an employer-employee relationship and does not include facilitating engagements between self-employed persons and their clients.

Sec. 3. *Applications for private employment agency licenses*

a. The person or persons submitting an application for a private employment agency license must have the legal authority to fully represent and bind the agency.

b. Applicants for private employment agency licenses shall submit the following:

1) An Application for Employment Agency License(s) on a form prescribed by the Labor Commissioner;

2) A Background Information Form for each person submitting the application on behalf of the agency;

3) Two completed Fingerprint Cards (Form FD 258) and a cashier’s check or money order in the amount of \$45.00 payable to the “Nevada Highway Patrol” for each person submitting the application on behalf of the agency;

4) Affidavits from two persons who reside in the State of Nevada for each person submitting the application on behalf of the agency attesting to their good moral character;

5) A copy of the corporate information as posted on the Nevada Secretary of State’s website if the agency is required to register with the Secretary of State;

6) A fee payment in the amount of \$100.00 for each premises to be licensed;

7) A bond that meets the requirements of NRS 611.070 in the amount of \$1,000.00 for each premises to be licensed; and

8) For home-based businesses, a certification from the appropriate local government agency that operating a private employment agency at that location is permissible under local ordinance.

Sec. 4. *Employment agency premises*

a. A private employment agency license is valid only for business conducted from the premises identified on the license.

b. A licensee may change the premises where business is conducted with the prior approval of the Labor Commissioner and failing to obtain prior approval shall constitute an abandonment of the license.

c. All records maintained pursuant to NRS 611.020 to 611.320, inclusive, shall be kept at the premises identified on the license unless the Labor Commissioner grants the licensee permission to make alternative arrangements pursuant to a written request from the licensee.

Sec. 5. Bonding

a. Cash to be deposited with the State Treasurer in the name of the agency is the preferred method of bonding.

b. A licensee electing to utilize a surety bond must notify the Labor Commissioner of any changes in the coverage provided by the bond as soon as possible, but in no case more than one business day after the licensee becomes aware of the change. Any failure to do so may result in a determination by the Labor Commissioner that the license has been abandoned in addition to any other penalties that may be imposed.

c. A licensee electing to utilize a savings certificate pursuant to NRS 611.070(3)(b) must provide a certification signed by an officer of the financial institution issuing the savings certificate that the terms and conditions of the instrument fully comply with the requirements of NRS 611.070.

Sec. 6. Fees

a. Fees for placing an employee with an employer may be charged to either the employee or the employer, but not to both for the same position.

b. Fees charged to applicants for employment are subject to the following limitations:

1) If the applicant for employment fails to obtain employment, does not accept the position or the length of employment is less than seven days, the agency may not charge a fee to the applicant for employment and must refund any fees previously collected pursuant to NRS 611.250.

2) If the applicant for employment accepts employment with the employer, but the length of employment is seven or more days, but less than thirty days, the agency may not charge a fee that exceeds 40 percent of the gross cash wages received by the employee for that time period.

3) If the applicant for employment accepts employment with the employer and the length of employment is thirty days or more, the agency may not charge a fee that exceeds 65 percent of the gross cash wages received by the employee for the first month of employment.

4) If the agency places a babysitter and the length of employment is less than seven days, the agency may not charge a fee that exceeds fifteen percent of the wages paid to the babysitter for that time period.

c. For the purpose of calculating the number of days employed in subsection b, time is counted from the first day on which the employee works.

d. There is no limitation on the fee that may be charged to an employer.

e. Upon the written authorization of the employee, a payroll deduction for the purpose of paying the agency fee may be taken from the employee's paycheck and paid directly to the agency, but in no event shall the amount deducted exceed the limitations set forth in subsection b, above.