

**SUNSET EVALUATION REPORT
REGULATION OF
COMMERCIAL EMPLOYMENT AGENCIES**

Chapter 373, Hawaii Revised Statutes

A Report to the Governor and the Legislature of the State of Hawaii

**Submitted by the
Legislative Auditor of the State of Hawaii
Honolulu, Hawaii**

**Report No. 88-3
January 1988**

FOREWORD

Under the "Sunset Law," licensing boards and commissions and regulated programs are terminated at specific times unless they are reestablished by the Legislature. Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, scheduled for termination 38 licensing programs over a six-year period. These programs are repealed unless they are specifically reestablished by the Legislature. In 1979, the Legislature assigned the Office of the Legislative Auditor responsibility for evaluating each program prior to its repeal.

This report evaluates the regulation of commercial employment agencies under Chapter 373, Hawaii Revised Statutes. It presents our findings as to whether the program complies with the Sunset Law and whether there is a reasonable need to regulate commercial employment agencies to protect public health, safety, or welfare. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Act 136, SLH 1986, draft legislation intended to improve the regulatory program is incorporated in this report as Appendix B.

We acknowledge the cooperation and assistance extended to our staff by the Department of Commerce and Consumer Affairs and other officials contacted during the course of our examination. We also appreciate the assistance of the Legislative Reference Bureau which drafted the recommended legislation.

Clinton T. Tanimura
Legislative Auditor
State of Hawaii

January 1988

TABLE OF CONTENTS

<i>Chapter</i>		<i>Page</i>
1	INTRODUCTION	1
	Objective of the Evaluation	1
	Scope of the Evaluation	1
	Organization of the Report	2
	Framework for Evaluation	2
2	BACKGROUND	7
	Description of the Industry	7
	Legislative History	9
	Nature of Regulation	12
3	EVALUATION OF THE REGULATION OF COMMERCIAL EMPLOYMENT AGENCIES	17
	Summary of Findings.....	17
	The Need for Regulation	18
	The Need for Strengthened Regulation	21
	Recommendations	25
	NOTES	29
Appendix A:	Comments on Agency Responses.....	A-1
Appendix B:	Proposed Legislation.....	B-1

Chapter 1

INTRODUCTION

The Hawaii Regulatory Licensing Reform Act of 1977, or Sunset Law, repeals statutes concerning 38 occupational licensing programs over a six-year period. Each year, six to eight licensing statutes are scheduled to be repealed unless specifically reenacted by the Legislature.

In 1979, the Legislature amended the law to make the Legislative Auditor responsible for evaluating each licensing program prior to its repeal and to recommend to the Legislature whether the statute should be reenacted, modified, or permitted to expire as scheduled. In 1980, the Legislature further amended the law to require the Legislative Auditor to evaluate the effectiveness and efficiency of the licensing program, even if he determines that the program should not be reenacted.

Objective of the Evaluation

The objective of the evaluation is: To determine whether, in light of the policies set forth in the Sunset Law, the public interest is best served by reenactment, modification, or repeal of Chapter 373, Hawaii Revised Statutes.

Scope of the Evaluation

This report examines the history of the statute on the regulation of commercial employment agencies and the public health, safety, or welfare that the statute was designed to protect. It then assesses the effectiveness of the statute in preventing public injury and the continuing need for the statute.

Organization of the Report

This report consists of three chapters: Chapter 1, this introduction and the framework for evaluating the licensing program; Chapter 2, background information on the regulated industry and the enabling legislation; and Chapter 3, our evaluation and recommendations.

Framework for Evaluation

Hawaii's Regulatory Licensing Reform Act of 1977, or Sunset Law, reflects rising public antipathy toward what is seen as unwarranted government interference in citizens' lives. The Sunset Law sets up a timetable terminating various occupational licensing programs. Unless reestablished, the programs disappear or "sunset" on a prescribed date.

In the Sunset Law, the Legislature established policies on the regulation of professions and vocations. The law requires each occupational licensing program to be assessed against these policies in determining whether the program should be reestablished or permitted to expire as scheduled. These policies, as amended in 1980, are:

1. The regulation and licensing of professions and vocations by the State shall be undertaken only where reasonably necessary to protect the health, safety, or welfare of consumers of the services; the purpose of regulation shall be the protection of the public welfare and not that of the regulated profession or vocation.

2. Where regulation of professions and vocations is reasonably necessary to protect consumers, government regulation in the form of full licensure or other restrictions on the professions or vocations should be retained or adopted.

3. Professional and vocational regulation shall be imposed where necessary to protect consumers who, because of a variety of circumstances, may be at a disadvantage in choosing or relying on the provider of the services.

4. Evidence of abuses by providers of the services shall be accorded great weight in determining whether government regulation is desirable.

5. Professional and vocational regulation which artificially increases the costs of goods and services to the consumer should be avoided.

6. Professional and vocational regulation should be eliminated where its benefits to consumers are outweighed by its costs to taxpayers.

7. Regulation shall not unreasonably restrict entry into professions and vocations by all qualified persons.

We translated these policy statements into the following framework for evaluating the continuing need for the various occupational licensing statutes.

Licensing of an occupation or profession is warranted if:

1. There exists an identifiable potential danger to public health, safety, or welfare from the operation or conduct of the occupation or profession.

2. The public that is likely to be harmed is the consuming public.

3. The potential harm is one against which the public cannot reasonably be expected to protect itself.

4. There is a reasonable relationship between licensing and protection of the public from potential harm.

5. Licensing is superior to other alternative ways of restricting the profession or vocation to protect the public from the potential harm.

6. The benefits of licensing outweigh its costs.

The potential harm. For each regulatory program under review, the initial task is to identify the purpose of regulation and the dangers from which the public is to be protected.

Not all potential dangers warrant the exercise of the State's licensing powers. The exercise of such powers is justified only when the potential harm is to public health, safety, or welfare. "Health" and "safety" are fairly well understood. "Welfare" means well-being in any respect and includes physical, social, and economic well-being.

This policy that the potential danger be to the public health, safety, or welfare is a restatement of general case law. As a general rule, a state may exercise its police power and impose occupational licensing requirements only if such requirements tend to promote the public health, safety, or welfare. Courts have held that licensing requirements for paperhangers, housepainters, operators of public dancing schools, florists, and private land surveyors could not be justified.¹ In Hawaii, the State Supreme Court ruled in 1935 that legislation requiring photographers to be licensed bore no reasonable relationship to public health, safety, or welfare and constituted an unconstitutional encroachment on the right of individuals to pursue an innocent profession.² The court held that mere interest in the practice of photography or in ensuring quality in professional photography did not justify the use of the State's licensing powers.

The public. The Sunset Law further states that for the exercise of the State's licensing powers to be justified, the potential harm must be to the health, safety, or welfare of that segment of the public consisting mainly of consumers of

the services provided by the regulated occupation. The law makes it clear that the focus of protection should be the consuming public and not the regulated occupation or profession itself.

Consumers are all those who may be affected by the services provided by the regulated occupation. Consumers do not have to purchase the services directly. The provider of services may have a direct contractual relationship with a third party and not with the consumer, but the criterion is met if the provider's services ultimately flow to and adversely affect the consumer. For example, the services of an automobile mechanic working for a garage or for a U-drive establishment flow directly to the employer, but the mechanic's workmanship ultimately affects the consumer who brings a car in for repairs or who rents a car from the employer.

Consumer disadvantage. The exercise of the State's licensing powers is not warranted if the potential harm is one against which the consumers can reasonably be expected to protect themselves. Consumers are expected to be able to protect themselves unless they are at a disadvantage in selecting or dealing with the providers of services.

Consumer disadvantage can arise from a variety of circumstances. It may result from a characteristic of the consumer or from the nature of the occupation or profession being regulated. Age is an example of a consumer characteristic which may cause the consumer to be at a disadvantage. The highly technical and complex nature of an occupation is an illustration of occupational characteristic that may place the consumer at a disadvantage. Medicine and law fit into the latter illustration. Medicine and law were the first occupations to be licensed on the theory that the general public lacked sufficient knowledge about medicine and law to be able to make judgments about the relative competencies and about the quality of services provided to them by the doctors and lawyers of their choice.

However, unless otherwise indicated, consumers are generally assumed to be knowledgeable and able to make rational choices and to assess the quality of services being provided them.

Relationship between licensing and protection. Occupational licensing cannot be justified unless it reasonably protects the consumers from the identified potential harm. If the potential harm to the consumer is physical injury arising from possible lack of competence on the part of the provider of service, the licensing requirements must ensure the competence of the provider. If, on the other hand, the potential harm is the likelihood of fraud, the licensing requirements must be such as to minimize the opportunities for fraud.

Alternatives. Licensing may not be the most appropriate method for protecting consumers. Instead, prohibiting certain business practices, governmental inspection, or the inclusion of the occupation within another existing business regulatory statute may be preferable, appropriate, or more effective in protecting the consumers. Increasing the powers, duties, or role of the consumer protector is another possibility. For some programs, a nonregulatory approach may be appropriate, such as consumer education.

Benefit-costs. Even when all other criteria set forth in this framework are met, the exercise of the State's licensing powers may not be justified if the costs of doing so outweigh the benefits to be gained. The term "costs" in this regard means more than direct money outlays or expenditure for a licensing program. "Costs" include opportunity costs or all real resources used up by the licensing program; they include indirect, spillover, and secondary costs. Thus, the Sunset Law asserts that regulation which artificially increases the costs of goods and services to the consumer should be avoided; and regulation should not unreasonably restrict entry into professions and vocations by all qualified persons.

Chapter 2

BACKGROUND

Chapter 373, Hawaii Revised Statutes, regulates commercial employment agencies. It defines an employment agency as "any individual, partnership, corporation, or association engaged in the business of providing employment information, procuring employment for applicants, or procuring employees for placement with employers upon request, for a fee or other valuable thing, exacted, charged, or received." The law excludes employment services provided by the United States and by the State and its instrumentalities.³

Description of the Industry

Employment agencies act as paid representatives or brokers for labor services. They obtain job orders from businesses desiring to fill positions that require particular skills, and they solicit candidates seeking employment. The agencies screen applicants as to their background, education, and past work experience in an effort to match an employer's need with an applicant's qualifications. When an agency feels that such a match exists, it then refers the applicant to the prospective employer.

There are two types of employment agencies in the State: personnel recruiters, commonly referred to as "headhunters," and general purpose personnel services. Personnel recruiters specialize in soliciting individuals with skills which are technical or in high demand and which command fairly large salaries. These

firms handle only permanent placements, and their fee (based on a percentage of the applicant's annual gross salary) is always paid by the employer. There are four personnel recruiters in the State, two of which are affiliated with national recruiting chains.

The more prevalent general purpose agencies solicit applicants for a wide range of occupations for both permanent and temporary employment. The fee, at the employer's option, may be either "employer paid" or "applicant paid." It is usually based on a flat percentage of the employee's earnings for a specified length of time.

Placement fees charged by these agencies vary. Generally, the fee for permanent employment ranges between 25 and 40 percent of gross wages for a stated period of calendar days or working days (normally there are about 20 to 21 working days per calendar month). Agencies which charge on the basis of calendar days, use 30, 60, or 90 days. In Hawaii, agencies which base their fees on working days all use 60 days. The most frequently used fee structure for permanent placement in Hawaii is 30 percent of gross earnings for 60 calendar days.

Only one agency in Hawaii uses a variable percentage in arriving at its fee for permanent employment. For this agency, the percentage varies between 70 and 140 percent, depending on the amount of the first month's gross earnings. The fee is 70 percent for monthly gross wages of \$600 or less and increases to 140 percent for monthly wages of \$1,600 or more. The fee, if paid within 30 calendar days, is 10 percent less. However, all fees are payable within eight weeks.

Fees for temporary employment are usually 10 percent for 60 or 90 calendar days.⁴

Hawaii is one of 45 states that regulate the commercial employment agency industry. Of those 45 states, 16 (including Hawaii) set payment of a license fee, competency testing, and bonding as the criteria for licensure. Four states only require payment of a license fee. Twenty-four require payment of a fee and bonding, and one requires only bonding as a prerequisite for licensure.⁵ As of June 1987, 42 agencies held certificates of licensure from the Department of Commerce and Consumer Affairs (DCCA) to operate in Hawaii.⁶

Legislative History

While employment agencies in Hawaii have been required to pay a license fee since 1907, it was not until 1959 that legislation was enacted to regulate the industry's operations and practices.

The impetus for regulation came from a group of employment agency operators who voiced concern about the dramatic increase in the number of agencies operating in Hawaii.⁷ Statistics supplied by the Department of Labor and Industrial Relations (DLIR) showed that there were only five agencies doing business in Hawaii in 1954. By 1959, the number had grown to 26. According to DLIR, these 26 agencies had placed some 6,714 individuals that year, and there was concern that the existing law was inadequate to protect effectively individuals seeking employment.⁸ In response to this concern, the Legislature by Act 264, SLH 1959, defined the responsibilities of employment agencies and established requirements for licensure. Among other provisions, the law required the posting of a \$3,000 bond for faithful performance against fees incorrectly obtained, established a maximum fee schedule for services rendered, and outlined nine prohibited acts on the part of an agency and its employees.

The act designated DLIR as the administering agency and authorized its director to recover from employment agencies any fees which they had illegally obtained from clients, to investigate violations, and to revoke licenses. Sanctions included fines or imprisonment or both for violating any provision of the act. In cases involving disciplinary action, appeals from the director's decisions could be made to the Labor and Industrial Relations Appeals Board. Additionally, the Commission of Labor and Industrial Relations was authorized to adopt rules and regulations to administer the program.⁹

Since 1959, the commercial employment agencies licensing law has been amended some ten times. In general, the rationale for amending the law has been to protect the public, to professionalize the industry, and to improve the administration of the law. Some of the more significant amendments are summarized below.

In 1961, Act 45 amended the maximum fee schedule requirement by allowing the director of DLIR to establish rules and regulations for the fees that employment agencies could charge. The act also increased the bond requirement from \$3,000 to \$5,000.

Then in 1978, Act 202 added a written examination to the licensing requirement as a means to increase the level of professionalism in the industry. The House Committee on Consumer Protection and Commerce had initially proposed that applicants pass the certified consultant examination administered by the National Employment Association.¹⁰ However, the Senate Judiciary Committee deleted this requirement and provided instead that applicants pass an examination designated by the director of DLIR. The committee concluded that:

"Your committee is aware that the name of the association has recently been changed to that of the National Association of Personnel

Consultants. Your Committee is concerned about the consequences that may arise should the association disband or otherwise go out of existence. To alleviate this concern, your Committee has amended the bill to provide that the director [of DLIR] have the discretion to designate the examination. The director may designate any test, including one prepared by the department, as the one to be passed."¹¹

In 1980, Act 287 repealed the power of the director to set fees and required instead that employment agencies file a schedule of their fees with the director. The act also required that any agreement or contract between the applicant and the employment agency be in writing and contain the gross amount of the fee and the time period on which the fee was to be based. In that same year, Act 302 transferred the commercial employment agencies program to the Department of Regulatory Agencies (now DCCA) for administrative purposes.

In 1982, Act 163 mandated that certain subject areas be included in the licensing examination. The Senate Committee on Human Resources noted that "this bill will provide for inclusion of specific subject matter in the employment consultant examination to protect and assure the consumer that those agencies which have received a license have a basic knowledge in the operations of an employment agency."¹² In that same year, the Legislature, by Act 207, also added several prohibitions to the list of acts and practices deemed to be unlawful on the part of employment agencies. This was done to enhance "ethical business practices by employment agencies."¹³

In 1983, Act 84 deleted the Labor and Industrial Relations Appeals Board and provided a hearings procedure for commercial employment agency applicants and licensees in conformance with Chapter 91, HRS, and the procedures of DCCA.

Finally, in 1985, the Legislature, by Act 145, added the requirement that each agency have a licensed principal agent or licensed individual as a prerequisite for obtaining an agency license. It also required that each branch office maintain a

license and employ a licensed principal agent. Separate fees for license application, examination, reexamination, license renewal, and license restoration were adopted together with a biennial license renewal period. The law provided for automatic suspension of an agency's license upon expiration or cancellation of the required bond. In addition, it prohibited an employment agency from requiring the employer to withhold from the applicant's earnings any fee or service charge that had been negotiated between the applicant and the employment agency unless specifically authorized in writing by the applicant.

Nature of Regulation

Chapter 373 is the basis for regulating commercial employment agencies doing business in the State. The statute has been supplemented by rules adopted by DCCA.

Unlike the majority of the State's licensing programs, employment agencies are not regulated by a board. Responsibility for regulation of the industry is vested in the director of DCCA. The DCCA accepts and processes applications, administers the examination for licensure of principal agents, issues licenses, and registers employment agencies and principal agents. The program is administered on a day-to-day basis by an executive secretary who is authorized to review and approve applications for licensure, contract agreement forms, and placement fee schedules.

Responsibility for investigating and prosecuting complaints against licensees is handled by the Regulated Industries Complaint Office (RICO) under DCCA. The RICO is also responsible for handling all complaints related to unlicensed activities.

Licensing requirements and procedures. To become licensed, employment agencies must:

- . file an application for license with DCCA;
- . pay application, license, and compliance resolution fund fees amounting to \$90;*
- . post a \$5,000 performance bond;
- . employ a licensed principal agent in each office; and
- . submit to DCCA for review and approval the agency's intended agency/applicant contract form together with its schedule of placement fees to be charged.

The principal agent, defined by Section 373-1, HRS, as "the responsible managing agent who is responsible for managing an employment agency," must meet the following requirements:

- . file an application for examination with the department;
- . pay an application and exam fee of \$50;
- . obtain a passing grade of 70 percent on the written examination; and
- . file an application for principal agent's license with DCCA, and pay a license fee of \$35.

* The Compliance Resolution Fund is a special fund established by Act 60, SLH 1982, to defray the costs of attorneys, investigators and other personnel employed by RICO. The fund is supported by a \$25 fee levied on all licensees. Penalties and fines assessed as a result of actions brought by RICO are also deposited into the fund.

Each license must be displayed together with a copy of the placement fee schedule in the main room where the agency is conducting its business. Licenses are not transferable except on approval of the director, and they are valid only for the locations specified on the application forms.

Every employment agency must keep complete records of all advertisements placed, job orders received, and applicants sent out for interviews. These records must be maintained for at least two years.

Prohibited acts. Acts and practices prohibited on the part of employment agencies and their employees include the following:

- . Disseminating false, fraudulent, or misleading information;
- . Sending applicants out for employment without first having obtained bona fide job orders from prospective employers;
- . Sending applicants out for employment where labor disputes exist without first having informed the applicants through a written statement;
- . Splitting with employers or employers' agents any fee received from an applicant, or intentionally causing the discharge of an employed person for the purpose of obtaining other employment for such person through the agency;
- . Sending minor applicants out for employment without investigating the nature of the jobs involved and ascertaining their appropriateness for minors;
- . Placing applicants in employment in violation of any law;
- . Collecting an advance fee from an applicant;
- . Using the name "United States Employment Service" or "State of Hawaii Employment Service";

- . Requiring applicants to execute a power of attorney, assignment of wages, or other instruments relating to the liability of applicants unless the instrument has been approved by DCCA;
- . Making inaccurate representations concerning such things as the nature of a job, probable length of employment, hours, salary, and other relevant terms and conditions of employment;
- . Withholding from applicants written disclosure of any fees or charges for services rendered prior to the actual rendering of such services;
- . Providing inaccurate or incomplete information to an employer about an applicant's personal record, work record, salary requirements, and qualifications;
- . Charging a placed applicant any fee prior to receipt of actual earnings from employment;
- . Requiring the employer to withhold the placement fee from the applicant's earnings without the written authorization of the applicant.

Disciplinary actions. Should the director of DCCA seek to revoke, suspend, fine, cancel, or refuse to grant or renew a license for violation of any rule or section of Chapter 373, HRS, the director is required to give the affected party proper notice and a hearing in conformance with the Administrative Procedure Act (Chapter 91, HRS). Any party directly affected by a decision may appeal to the circuit court. Additionally, the State may bring criminal proceedings in a court of law for a violation of Chapter 373. Persons convicted are subject to a fine of not more than \$1,000 or imprisonment for not more than six months, or both.

Moreover, under Chapter 480, HRS, (entitled "Monopolies; Restraint of Trade") penalties may be collected through civil actions brought by the Attorney General,

the Office of Consumer Protection, or DCCA. Specifically, under Section 480-3.1, penalties of not less than \$500 nor more than \$10,000 for each violation may be collected in a civil action for unfair methods of competition and unfair or deceptive acts or practices. Under Section 480-13, penalties of not less than \$500 nor more than \$2,500 may be collected from unlicensed agencies that furnish services.

Chapter 3

EVALUATION OF THE REGULATION OF COMMERCIAL EMPLOYMENT AGENCIES

This chapter contains our evaluation of the need for regulation of commercial employment agencies. We determine *first*, whether the conduct of business by commercial employment agencies poses a potential harm to the public; and *second*, if such potential harm does exist, whether the present method of licensing employment agencies is the most effective and efficient method of providing that protection.

Summary of Findings

We find that:

1. The potential for harm to consumers in the commercial employment agency industry justifies continued regulation of this industry.
2. In addition to being continued, regulation of the commercial employment agency industry should be strengthened. Inasmuch as the prohibition of advance fees and full disclosure of consumer information appear to offer the best protection to consumers, regulatory improvements should be directed toward enhancing these two types of protection.
3. Review of the bonding requirement and improvement of some of the practices related to the licensing examination would also strengthen the regulation of the commercial employment agency industry.

The Need for Regulation

Commercial employment agency operations do pose a potential for significant public harm. Since 1983 when complaint investigation was centralized in the Regulated Industries Complaint Office (RICO), a total of 116 complaints have been filed against commercial employment agencies. These complaints include collecting advance placement fees from the applicant, then failing to place the applicant, and refusing to refund the fees; charging fees even when the applicant obtains employment after the time period specified in the contract; attempting to collect placement fees when the employment has been obtained without the agency's assistance; and charging fees in excess of those agreed upon in the contract.

The potential for harm is well illustrated in a recent court suit brought by RICO against one employment agency. This case resulted from a situation where a large number of persons suffered significant financial losses at the hands of unscrupulous operators of an employment agency.

The agency in question illegally collected \$450 for "communication costs" or "resume preparation" from each applicant who contracted with the agency. It did this first as an unlicensed employment agency and later as a licensed agency.

The agency was first brought to RICO's attention by an anonymous complainant in late 1984. RICO advised the agency to refrain from acting as a licensed employment agency until properly licensed.

Then, in January 1985, another complainant alleged that he had paid \$450 for communication costs, had failed to be placed in any job, and had been unable to obtain a refund. The RICO warned the agency that it was engaged in unlicensed activities as well as illegal operating practices.

On May 15, 1985, the agency and its principal agent received licensure from DCCA. This occurred only after contract forms submitted on two previous occasions were rejected for various reasons, including an illegal provision requiring advance fees.

The agency never used the approved contract form. It substituted for the approved form one which had previously been rejected on the basis that it contained an advance fee clause.

The complaints continued, and despite repeated warnings from RICO against such practices, the agency continued to solicit and collect advance fees. On October 1, 1985, RICO officials met with the agency representatives. The agency's principals admitted receiving \$10,000 a week in advance fees. The DCCA's director immediately ordered the agency to return all illegally collected fees and filed for a temporary restraining order. Instead of complying with the director's order, the principals, on or before October 4, 1985, left the State.

The RICO's subsequent investigation revealed that the scope of illegal activity was much larger than had been anticipated. Available records indicated that the agency actually collected advance fees from some 1,519 persons throughout the continental United States and Hawaii and made refunds to only 62 of these individuals.

On November 26, 1986, RICO received a \$15.2 million judgment against the company, and two of the three principals were fined civil penalties amounting to \$1.6 million. Then on June 30, 1987, the third principal was fined civil penalties amounting to \$800,000 and ordered to pay \$465,650 in restitution to the 1,427 injured parties who had not received any redress. At the time of our evaluation, RICO had initiated efforts to locate the agency principals to determine what prospects exist for collecting restitution and penalties.

This case illustrates, then, the harm which can be done to the public by employment agencies and which state regulation was designed to address. While the present laws governing commercial employment agencies failed to prevent the occurrence of abuses, the law prohibiting advance fees did enable the State to close down the agency's operations and obtain civil remedies.

Specifically, Section 373-2, HRS, states that "[n]o employment agency shall engage in business without a license obtained under this chapter and the rules of the director." Additionally, Section 373-11(13), HRS, states that "[n]o employment agency shall charge an applicant any fee or service charge until such time as an applicant is employed by an employer as a result of the employment agency's efforts and has received actual earnings from employment." These provisions of law did not prevent the agency cited above from collecting advance fees. The law did, however, make it easier for RICO to take action and obtain civil judgment against the agency without first having to prove that unfair and detrimental acts had occurred. The Legislature has already determined that the collection of advance fees is detrimental to the welfare of the public and constitutes an unfair practice. Under these circumstances, RICO did not have to make a case showing the harmful and unfair nature of such a practice; it only had to prove that the practice had been engaged in.

Without regulation, job applicants would be at a greater disadvantage in attempting to obtain civil remedies against unscrupulous or incompetent employment agencies and their agents because it would be necessary to establish first that the practices were harmful and unfair. It would also require personal initiative to file suit rather than place responsibility on government to follow up on reported abuses.

On this basis, we believe the industry should continue to be regulated.

The Need for Strengthened Regulation

In this section, we discuss several areas where regulatory operations should be strengthened and improved.

Prohibition against advance fees. The prohibition against the collection of advance fees is a key protection to consumers. *First*, it avoids an out-of-pocket expense for job applicants until agencies actually find jobs for them. *Second*, it provides an incentive for agencies to perform—if an agency fails to find employment for the applicant, it receives no fee. However, this protection can be effective only if consumers are fully aware that they have this protection under the law.

Disclosure of no advance fee. All promotional literature and advertisements distributed or placed by employment agencies should disclose the fact that the collection of advance fees is prohibited by law. This type of disclosure is needed to enhance consumer awareness. In addition, to ensure that applicants understand their rights under the law, a disclosure statement should be built into the agency/applicant contract. The statement should read that the applicant does not owe the agency a fee until the applicant is employed and has received wages from the employer. This statement should be signed by the applicant. Such a statement in the contract document itself would enhance consumer awareness of the law and make it more difficult to convince job applicants that advance fees should be paid.

Disclosure of applicant's right to appeal to DCCA. To further safeguard the rights of job applicants, agencies should be required by statute to inform applicants about DCCA complaint procedures, including the address and phone number of the executive secretary in charge of the commercial employment agencies program.

This disclosure would assist those applicants unable to resolve complaints privately and thereby may encourage agencies to deal more fairly and quickly with job applicants.

Disclosure of other information. Employment agencies should also be required by statute to disclose the name of the principal agent, the agent's license number, and license expiration date in the agency/applicant contract. Disclosure of this information should help to encourage agencies to deal more fairly with their clients by providing the clients with explicit information concerning the person who is ultimately responsible for the agency's actions.

Disclosure of placement fees. One additional disclosure appears needed to protect consumers. There is a need to disclose the fees charged by all employment agencies.

At present, the schedule of placement fees for each agency, which may not be changed more than once during a calendar year, requires DCCA approval. Such a change in fees is not supposed to become effective until it has been approved.

Our review indicates, however, that fee schedules are never disapproved. This is primarily because the law provides no basis or criteria for withholding approval. Previous legal limits on fees have been removed from the law, including the authority of the director of DCCA to set fees by rule. This being the case, DCCA approval of fees becomes quite meaningless and unnecessary.

However, what would appear to be more effective would be for DCCA to require the annual disclosure of fee schedules so that it could compile a listing of the fees charged by the various agencies and then make this comparative information available to the general public. This has been done with respect to automobile insurance rates. To strengthen further this protection, it could also be

required that the agency/applicant contract contain a note that the information on comparative fees is available from DCCA. With such information, job applicants would be able to know the fees charged by the different agencies and to shop around for the agency which offers the best terms.

Promotion of consumer awareness through school counselors. As a part of its consumer awareness efforts, DCCA should also embark on a program designed to inform and educate counselors in schools and colleges concerning the laws governing commercial employment agencies, especially the provision against the collection of advance fees. In this way, counselors would be in a better position to help students who may be planning to use an employment agency in the near future. As a first step, the executive secretary in charge of the commercial employment agencies program should put together a packet containing the laws and rules and regulations and any other relevant information on employment agencies. The high schools and colleges in the State should then be informed of the availability of the informational packet.

Students seeking employment for the first time are likely to be unfamiliar with the laws governing commercial employment agencies and thus may be more easily victimized by unscrupulous agencies and their agents. Therefore, a program to inform and educate counselors concerning employment agencies and consumers' rights in this field should be helpful for students.

Bond requirement. The statute requires the posting of a \$5,000 penal bond by each employment agency. In general, a penal bond is a promise to pay a certain amount of money in the event the terms imposed as conditions of the bond are not carried out. In the case of employment agencies, the terms imposed as conditions of the bond are: (1) that the licensee shall not violate Chapter 373, HRS, and (2) that

the licensee shall promptly, refund to the director all fees illegally or incorrectly obtained from applicants.

The present bond amount was established in 1961 (Act 45, SLH) and is insufficient both as a means of ensuring compliance with the law and as a penalty for breach of the bond. By way of illustration, in the large case already cited, the agency's principals apparently were not too concerned about losing the \$5,000 bond posted with DCCA inasmuch as the agency was collecting \$10,000 a week in illegal fees.

Members of Hawaii's bonding community acknowledge that the current requirement is not sufficient to serve as a deterrent against unlawful practices or "fly-by-night" agency operators. However, several factors must be considered before an amount can be specified, including the degree of risk, the size of the financial obligation, and cost.

In our January 1987 Sunset Evaluation Report on Cemeteries and Mortuaries,¹⁴ we recommended that DCCA "undertake a study to determine whether bonds are worth their cost, at what levels or by what formula they should be set, and whether (or to what extent) they should be complemented or replaced by insurance."¹⁵ The DCCA has not yet undertaken such a study, but we still believe it needs to be done.

Test, grading and scores. Under prevailing practice, the two clerk-typists in the examination branch are called upon on various occasions to administer the employment agency certification exams as well as other licensing exams. The clerical staff is also required to grade manually the employment agency exams even though the exams are designed to be graded by machine. Manual grading of the exams is a tedious and time-consuming task in which human error is a definite

possibility, especially when the staff is not trained for such duties. The DCCA should arrange for the machine grading of the exams.

Beginning in September 1987, applicants for licensure as principal agents must pass a written examination developed by American Community Services, Inc. (now known as the National Assessment Institute or NAI).¹⁶ Previously, an examination developed by DCCA was used. The passing score for the old exam was 70 percent, and the department intends to retain this score for the new exam. However, the new passing score has been arbitrarily selected by DCCA and may or may not bear a relationship to the minimum level of competency deemed necessary for those who perform the work. The NAI should therefore be asked to establish a passing score that will reflect a minimum level of competency.

Recommendations

We recommend the following:

1. *Chapter 373, HRS, be reenacted to continue the regulation of commercial employment agencies.*

2. *Chapter 373, HRS, be amended to require that all agency/applicant contracts contain the following:*

- . a prominently displayed statement that no fee is to be paid until such time as the job applicant obtains employment and receives his or her first paycheck, with provision for this statement to be acknowledged by the applicant in writing;*
- . the name, license number, and license expiration date of the principal agent of the commercial employment agency; and*

. a statement setting forth the procedure for handling complaints affecting the contract, which includes the name, address, and telephone number of the office under the Department of Commerce and Consumer Affairs that is responsible for regulating commercial employment agencies.

3. Chapter 373, HRS, be amended to require that all advertisements and other promotional material for commercial employment agencies contain a prominently displayed statement that no fee is to be paid until such time as the job applicant obtains employment and receives his or her first paycheck.

4. Chapter 373, HRS, be amended to provide for the annual filing and public disclosure of commercial employment agency fees. Such fees would be filed annually with the Department of Commerce and Consumer Affairs in the manner and form prescribed by the department and would remain in effect for the ensuing year. The Department of Commerce and Consumer Affairs would be responsible for maintaining and compiling these fees and making them available for public inspection. In addition, there should be a requirement that all agency/applicant contracts contain a statement indicating that the fees charged are in accordance with the fees filed with the Department of Commerce and Consumer Affairs which are open for public inspection.

5. The Department of Commerce and Consumer Affairs undertake a consumer awareness program to acquaint all high school and college counselors with Hawaii's laws and rules and regulations governing commercial employment agencies and with consumer's rights in this field.

6. The Department of Commerce and Consumer Affairs undertake a study to determine whether bonds are worth their cost, at what levels or by what formula

they should be set, and whether they should be complemented or replaced by insurance.

7. The Department of Commerce and Consumer Affairs make appropriate arrangements for grading by machine of the certification examination for principal agents of commercial employment agencies and for the National Assessment Institute to establish a valid passing score for this examination.

NOTES

1. See discussion in *51 American Jurisprudence*, 2d., "Licenses and Permits," Sec. 14.
2. *Terr. v. Fritz Kraft*, 33 Haw. 397.
3. Hawaii Revised Statutes, Section 373-1 (1985).
4. Hawaii, Department of Commerce and Consumer Affairs, Placement Fee Data, Honolulu, 1987.
5. Idaho, Mississippi, New Hampshire, Rhode Island and Vermont are the only states that do not regulate commercial employment agencies.
6. Hawaii, Department of Commerce and Consumer Affairs, *Geographic Report*, Honolulu, 1987.
7. "Report To The Governor On Bills Passed By The Legislature: H.B. No. 1008," from the Director of the Department of Labor and Industrial Relations, May 26, 1959, and Senate Standing Committee Report 961 on H.B. No. 1008, Regular Session of 1959.
8. Information on H.B. No. 1008 submitted by the Department of Labor and Industrial Relations to the Honorable Hiroshi Kato, Chairman, House Judiciary Committee, April 13, 1959.
9. Session Laws of Hawaii 1959, Second Special Session, Act 1.
10. House Standing Committee Report 373-78 on H.B. No. 2462-78, Ninth Legislature, 1978, State of Hawaii.
11. Senate Standing Committee Report 603-78 on H.B. No. 2462-78, Eleventh Legislature, 1982, State of Hawaii.
12. Senate Standing Committee Report 866-82 on H.B. No. 2220-82, Eleventh Legislature, 1982, State of Hawaii.
13. Senate Standing Committee Report 865-82 on H.B. No. 2017-82, Eleventh Legislature, 1982, State of Hawaii.
14. Hawaii, Legislative Auditor, Sunset Evaluation Report, *Cemeteries and Mortuaries*, Chapter 441, Hawaii Revised Statutes, Report No. 87-6, Honolulu, 1987.

15. *Ibid.*, p. 25.

16. Agreement between the State of Hawaii by Russel S. Nagata, Director of the Department of Commerce and Consumer Affairs, and American Community Services, Inc., October 11, 1985.

APPENDICES

APPENDIX A

COMMENTS ON AGENCY RESPONSE

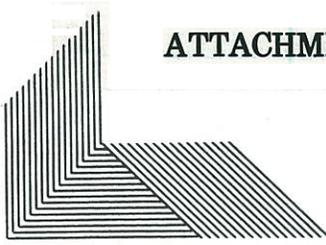
A preliminary draft of this Sunset Evaluation Report was transmitted on December 11, 1987, to the Department of Commerce and Consumer Affairs for its review and comments. A copy of the transmittal letter to the department is included as Attachment 1 of this Appendix. The response from the department is included as Attachment 2.

The department agrees that Chapter 373 should be reenacted with amendments and supports most of the recommendations. The department finds merit in including a statement in the agency/applicant contract prohibiting the collection of advance fees and supports additional disclosure on the principal of the agency. While the department finds merit with the inclusion of complaint handling procedures in the contract, it feels "[c]are should be taken that applicants will not be misled [sic] to think DCCA can resolve all contract disputes." As an alternative, the department favors legislation which will require the agency to produce for the applicant's review, a copy of the laws and rules and regulations governing commercial employment agencies. The department also supports this measure as a means to promote awareness of the laws and rules and regulations among school and college students.

The department has reservations about machine grading the principal agent competency examination and requests "the discretion to implement the manner of grading we determine is less tedious, time consuming and prone to error." Finally, the department will refer the matter of establishing a passing score for the competency examination to the National Assessment Institute for its review.

ATTACHMENT 1

THE OFFICE OF THE AUDITOR
STATE OF HAWAII
465 S. KING STREET, RM. 500
HONOLULU, HAWAII 96813



CLINTON T. TANIMURA
AUDITOR

December 11, 1987

COPY

Mr. Robert A. Alm, Director
Department of Commerce and Consumer Affairs
State of Hawaii
1010 Richards Street
Honolulu, Hawaii 96813

Dear Mr. Alm:

Enclosed are three preliminary copies, numbered four through six, of our *Sunset Evaluation Report, Commercial Employment Agencies*.

The report contains our recommendations relating to the regulation of employment agencies. If you have any comments on our recommendations, we would appreciate receiving them by January 11, 1988. Any comments we receive will be included as part of the final report which will be submitted to the Legislature.

Since the report is not in final form and changes may possibly be made to it, we request that you limit access to the report to those officials whom you wish to call upon for assistance in your response. Please do not reproduce the report. Should you require additional copies, please contact our office. Public release of the report will be made solely by our office and only after the report is published in its final form.

We appreciate the assistance and cooperation extended to us.

Sincerely,

Clinton T. Tanimura
Legislative Auditor

Enclosures

ATTACHMENT 2



JOHN WAIHEE
GOVERNOR

ROBERT A. ALM
DIRECTOR
COMMISSIONER OF SECURITIES

SUSAN DOYLE
DEPUTY DIRECTOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

1010 RICHARDS STREET
P. O. BOX 541
HONOLULU, HAWAII 96809

January 6, 1988

RECEIVED

JAN 11 7 57 AM '88

OFFICE OF THE AUDITOR
STATE OF HAWAII

Mr. Clinton T. Tanimura, Auditor
Office of the Legislative Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, HI 96813

Dear Mr. Tanimura:

We thank you for the opportunity to review and comment on the "Sunset Evaluation Report, Regulation of Commercial Employment Agencies, Chapter 373, HRS."

In response to your recommendations, we offer the following:

Recommendation 1: We concur that Chapter 373, HRS, be reenacted.

Recommendation 2: We support the first point with regard to the agency/applicant contract containing a statement prohibiting the collection of advance fees. In drafting the appropriate legislation to amend Chapter 373, HRS, we recommend that the letter size and print type be specified so as to clarify the meaning of "prominently displayed."

With regard to the second point, we can support the recommendation to provide additional disclosure on the principal of the agency. This information should be coupled with the same disclosure for the agency. Setting forth such information will provide the applicant a basis for verifying the licensure status of the agency and principal with DCCA as well as delineate the parties against whom a complaint should be filed, if one is pursued.

With regard to the last point we can find merit in this recommendation provided it is clearly set forth that the jurisdiction of DCCA is limited to violation of Chapter 373, HRS, and the applicable rules. Care should be taken that

Mr. Clinton T. Tanimura
January 6, 1988
Page 2

applicants will not be misled to think DCCA can resolve all contract disputes. Perhaps as an alternative to such a statement in the contract, legislation should be drafted to require the contract contain the right of an applicant to have the agency produce for review, a copy of the applicable law and rules regulating the practices of commercial employment agencies. Should the applicant need further clarification of the laws and rules, they then should be directed to DCCA. This alternative will place the onus on the licensee to have such material available for public inspection, promote an applicant's awareness of his/her rights, and accomplish your intended goal to "encourage agencies to deal more directly and quickly with job applicants."

Recommendation 3: We support this recommendation regarding advertisements and promotional material and further recommend that the letter size and print type be specified so as to clarify the meaning of "prominently displayed."

Recommendation 4: We support this recommendation regarding the annual filing and public disclosure of agency fees.

Recommendation 5: We can see this recommendation to be a secondary means to promote awareness of the law and rules governing the commercial employment agency practices, provided we have the resources and time available to devote to this activity. We however would more strongly support a statutory change to Chapter 373, HRS, to provide the applicant the right to have the agency produce such materials, as elaborated in our response to Recommendation 2.

Recommendation 6: The department has and will continue to review the issue regarding bonding and any viable alternatives. Discussions were initiated with the Insurance Commissioner and the Office of the Attorney General regarding the whole issue of bonding. The results of our discussion were no different from your findings as elaborated on page 24, paragraph two. We did, however, pursue legislative changes in 1987 to amend Chapter 441, HRS, whereby alternatives (or replacement) to bonding were provided to licensees. These alternatives have not undergone the test of time to determine their feasibility, but we did undertake some action in this area.

Mr. Clinton T. Tanimura
January 6, 1988
Page 3

Recommendation 7: We have no objection to considering your recommendation to have the examination for principal agents graded by machine, but we do question the rationale for arriving at this position. While you point out concerns for the process of manual grading (tedious, time consuming and subject to error) the same can also be said of machine grading. Further, we question the concern over training of staff to manually grade when the process is simply comparing the answers on the grading master to the answer marked by the applicant. We request the discretion to implement the manner of grading we determine is less tedious, time consuming and prone to error.

With regard to the recommendation for the NAI to establish a valid passing score for the principal examination, we will refer the matter to them for review. It is our understanding that when the NAI constructed the examination they also determined the passing score to be 70 percent.

Again, thank you for the opportunity to comment. We hope you will give consideration to the points and recommendations we have set forth.

Very truly yours,



ROBERT A. ALM
Director

APPENDIX B

DIGEST

A BILL FOR AN ACT RELATING TO COMMERCIAL EMPLOYMENT AGENCIES

Extends the law regulating commercial employment agencies to December 31, 1994. Requires commercial employment agencies to include in contracts with an applicant: (1) a statement indicating that fees are in accordance with the fees filed with the Department of Commerce and Consumer Affairs and that a listing comparing the fees charged by the various employment agencies is available for public inspection; (2) a prominently displayed statement, which shall be acknowledged by the applicant's signature, that no fee shall be paid until the applicant obtains a job and receives the first paycheck; (3) the name, license number, and license expiration date of the principal agent of the employment agency; and (4) a statement setting forth the procedure for handling complaints affecting the contract, which includes the name, address, and telephone number of the office in the department responsible for regulating commercial employment agencies. Requires that all advertisements and other promotional material for commercial employment agencies contain a prominently displayed statement that no fee shall be paid until the applicant obtains employment and receives the first paycheck.

Requires the Department of Commerce and Consumer Affairs to undertake a consumer awareness program to acquaint high school and college counselors with

Hawaii's laws and rules governing commercial employment agencies and with the consumer's rights in this area. Requires the department to conduct a study concerning the bonding requirement for commercial employment agencies. Requires the department to make arrangements for grading by machine of the certification examination for principal agents of commercial employment agencies and for the National Assessment Institute to establish a valid passing score for this examination.

A BILL FOR AN ACT

RELATING TO COMMERCIAL EMPLOYMENT AGENCIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§26H-4 Repeal dates. (a) The following chapters are
4 hereby repealed effective December 31, 1988:

- 5 (1) Chapter 465 (Board of Psychology)
6 (2) Chapter 468E (Board of Speech Pathology and Audiology)
7 (3) Chapter 468K (Travel Agencies)
8 [(4) Chapter 373 (Commercial Employment Agencies)
9 (5)] (4) Chapter 442 (Board of Chiropractic Examiners)
10 [(6)] (5) Chapter 448 (Board of Dental Examiners)
11 [(7)] (6) Chapter 436E (Board of Acupuncture)

12 (b) The following chapters are hereby repealed effective
13 December 31, 1989:

- 14 (1) Chapter 444 (Contractors License Board)
15 (2) Chapter 448E (Board of Electricians and Plumbers)
16
17
18

(3) Chapter 464 (Board of Registration of Professional Engineers, Architects, Surveyors and Landscape Architects)

(4) Chapter 466 (Board of Public Accountancy)

(5) Chapter 467 (Real Estate Commission)

(6) Chapter 439 (Board of Cosmetology)

(7) Chapter 454 (Mortgage Brokers and Solicitors)

(8) Chapter 454D (Mortgage and Collection Servicing Agents)

(c) The following chapters are hereby repealed effective December 31, 1990:

(1) Chapter 447 (Dental Hygienists)

(2) Chapter 453 (Board of Medical Examiners)

(3) Chapter 457 (Board of Nursing)

(4) Chapter 458 (Board of Dispensing Opticians)

(5) Chapter 460J (Pest Control Board)

(6) Chapter 462A (Pilotage)

(7) Chapter 438 (Board of Barbers)

(d) The following chapters are hereby repealed effective December 31, 1991:

(1) Chapter 448H (Elevator Mechanics Licensing Board)

(2) Chapter 451A (Board of Hearing Aid Dealers and Fitters)

(3) Chapter 457B (Board of Examiners of Nursing Home

Administrators)

(4) Chapter 460 (Board of Osteopathic Examiners)

(5) Chapter 461 (Board of Pharmacy)

(6) Chapter 461J (Board of Physical Therapy)

(7) Chapter 463E (Podiatry)

(e) The following chapters are hereby repealed effective
December 31, 1992:

(1) Chapter 437 (Motor Vehicle Industry Licensing Board)

(2) Chapter 437B (Motor Vehicle Repair Industry Board)

(3) Chapter 440 (Boxing Commission)

(f) The following chapters are hereby repealed effective
December 31, 1993:

(1) Chapter 441 (Cemetery and Funeral Trusts)

(2) Chapter 443B (Collection Agencies)

(3) Chapter 452 (Board of Massage)

(4) Chapter 455 (Board of Examiners in Naturopathy)

(5) Chapter 459 (Board of Examiners in Optometry)

(g) The following chapter is hereby repealed effective

December 31, 1994:

(1) Chapter 373 (Commercial Employment Agencies)

[(g)] (h) The following chapters are hereby repealed
effective December 31, 1997:

- 1 (1) Chapter 463 (Board of Private Detectives and Guards)
- 2 (2) Chapter 471 (Board of Veterinary Examiners)."

3 SECTION 2. Section 373-10, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§373-10 Fees. (a) Each employment agency shall file
6 annually with the director a schedule[, which may not be changed
7 more than once during each calendar year,] of its placement fees
8 for the ensuing year to be charged to applicants[.] at such time
9 and in the manner and form as prescribed by the director. The
10 director shall annually compile a listing of the fees charged by
11 all commercial employment agencies licensed under this chapter
12 and make such list available to the general public.

13 (b) The schedule, or change of schedule shall become
14 effective upon approval of the director; provided that the
15 director shall approve or disapprove within sixty days after the
16 schedule[, or change of schedule,] is filed.

17 (c) Any contract between an applicant and the employment
18 agency shall be in writing and shall contain [in]:

- 19 (1) In bold print enclosed within a conspicuous border,
20 the gross amount of the estimated fee charged and the
21 time period on which the fee is based[.];
- 22 (2) A statement indicating that the fees charged are in
23

1 accordance with the fees filed with the department and
2 that a comparative listing of the fees charged by all
3 commercial employment agencies licensed in the State
4 is available for public inspection;

5 (3) A prominently displayed statement, which shall be
6 acknowledged by the applicant's signature, that no fee
7 shall be paid until the job applicant obtains
8 employment and receives the first paycheck;

9 (4) The name, license number, and license expiration
10 date of the principal agent of the commercial
11 employment agency; and

12 (5) A statement setting forth the procedure for handling
13 complaints affecting the contract, which shall include
14 the name, address, and telephone number of the office
15 in the department of commerce and consumer affairs
16 responsible for regulating commercial employment
17 agencies.

18 A copy of the contract shall be provided to the applicant. The
19 director may adopt rules pursuant to chapter 91 to prescribe the
20 form and content of the contract.

21 (d) All advertisements and other promotional material for
22 commercial employment agencies shall contain a prominently
23

1 displayed statement that no fee shall be paid until the job
2 applicant obtains employment and receives the first paycheck.

3 [(d)] (e) No employment agency shall charge or collect any
4 registration fee or advance payment for services to be rendered
5 in finding employment.

6 [(e)] (f) It shall be a violation of this chapter for an
7 employment agency to charge, demand, or collect any registration
8 fee or advance payment for services, or any fee which is greater
9 than the applicable fee listed in the schedule which it has
10 filed with the director."

11 SECTION 3. To improve the effectiveness in regulating
12 commercial employment agencies, the department of commerce and
13 consumer affairs is directed to:

- 14 (1) Develop and implement a consumer awareness program to
15 acquaint high school and college counselors with
16 Hawaii's laws and rules governing commercial
17 employment agencies and with the consumer's rights in
18 this area;
- 19 (2) Conduct a study to determine whether bonds are worth
20 their cost, at what levels or by what formula bonds
21 should be set, and whether bonds should be
22 complemented or replaced with insurance; and
23
24

(3) Make appropriate arrangements for grading by machine of the certification examination for principal agents of commercial employment agencies and for the National Assessment Institute to establish a valid passing score for this examination.

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

INTRODUCED BY: _____