



Membership

Handbook

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THE FOUR BASIC OBJECTIVES, PURPOSES AND BENEFITS OF SCSA

- I. EDUCATION:** To increase the efficiency of the Personnel Services Industry by:
- (a.) The promotion of effective methods for serving employers and candidates.
 - (b.) the investigation and study of industrial and economic conditions affecting our industry.
 - (c.) the consideration of the relations between employers and employees with whom we work.
- II. ETHICS:** To set and maintain the highest standards of ethical practice.
- III. COOPERATION:** To promote constructive publicity and to create a better understanding, acquaintance, coordination and cooperation among Private Personnel Services.
- IV. PROTECTION:** To amply protect its members against all acts, methods and practices adverse to the best interest of the Personnel Services Industry.

The Benefits of SCSA Membership

- ✓ **Networking** – With access to our membership list and regional meetings, membership meetings and conferences, SCSA offers multiple avenues for forging relationships with other agencies that facilitate **SPLIT PLACEMENTS** and industry cooperation
- ✓ **Education** – Through Regional Lunches and State-wide conferences, SCSA offers more than 30 resources a year for you to gain knowledge on industry trends, recruiting basics, owner / manager training, employment law, legislation, and other issues that not only increase your knowledge, but can also get you those needed **CEU credits**
- ✓ **Certification** – SCSA endorses and encourages all recruiters to become certified – either Certified Staffing Professional (CSP) endorsed by ASA; or Certified Personnel Consultant (CPC), or Certified Temporary Staffing Specialist (CTS) both endorsed by NAPS
- ✓ **Legislative Watchdog and Lobby** – SCSA is constantly monitoring legislative issues and fighting against government competition and taxes
- ✓ **Legislative Updates** – SCSA periodically provides its members with legal and legislative updates concerning the employment industry around the US
- ✓ **Discounted Services** – SCSA members receive substantial discounted rates from trusted industry partners on Insurance (Health, E&O, Liability), Long Distance Telephone, Industrial Directories, Legal Newsletter, Internet Access, Drug Testing and other beneficial products & services. Additionally, as a SCSA member, you are automatically a member of the South Carolina Small Business Chamber of Commerce, entitled to all the benefits as a fully paid member.
- ✓ **Discounts to Regional lunches** – SCSA members receive a discount on Regional Lunches

- ✓ **Discounts on Conference registration** – SCSA Members receive a discount on Conference registration costs for joint conferences with North Carolina
- ✓ **ASA** – SCSA is an affiliate member of the American Staffing Association (ASA) www.staffingtoday.net
- ✓ **NAPS** – SCSA is an affiliate member of the National Association of Personnel Services (NAPS) www.recruitinglife.com
- ✓ **Informative Newsletter** – SCSA puts out a periodic newsletter with informative articles on hot issues and a calendar of upcoming events
- ✓ **Logo Use** – All member companies can use the SCSA logo on their website, letterhead, business cards or other promotional materials
- ✓ **Publicity** – Members receive enhanced visibility through our newsletter, membership directory, press releases, conferences, mail outs, e-mail and SCSA website. As a member, you are encouraged to send us articles about your company or about the staffing industry which can be posted on the SCSA website.
- ✓ **Standard of Ethical Practices** – All SCSA Members MUST adhere to the Standard of Ethical Practices and Procedures
- ✓ **Ethics Committee** – SCSA has an Ethics Committee that reviews and **arbitrates** any grievances an agency may have against another agency
- ✓ **Prestige** – Being a SCSA Member sets you apart; it shows you are dedicated to being the best and keeping our industry at a high professional level

OFFICIAL BYLAWS

The following includes the revisions approved by the membership on October 1, 2012.

ARTICLE I

Name

Section 1

The name of the Association shall be “South Carolina Staffing Association” (SCSA)

Section 2

The principal office of the Association shall be in Mt. Pleasant, SC. The Association may have such offices as may from time to time be designated by the Board of Directors.

Section 3

SCSA Standard of Ethical Practices is as defined in Appendix A.

ARTICLE II

Object and Purpose

The purpose of the Association shall be to educate the people in our industry, to obtain the highest standard of ethical practice, to promote constructive publicity, to create a better understanding, acquaintance, coordination and cooperation among the people in our industry and to amply protect its members against all acts, methods and practices inimical (adverse) to the best interest of the Personnel Services Industry.

ARTICLE III

Affiliation

Affiliation of this Association with any group or association must have the affirmative vote of the majority of the membership. It is our intent to maintain affiliation(s) with the National Association(s) that best represent the professional interests of our membership.

ARTICLE IV

Fiscal Year

The fiscal year shall commence on January 1st and shall end on December 31st.

ARTICLE V

Logo

The Association shall have a logo of such design as the Board of Directors may adopt.

ARTICLE VI

Limitation on Liabilities

Nothing herein shall constitute members of the Association as partners for any purpose. No member, officer, agent or employee of this Association shall be liable for the acts or failure to act on the part of any member, officer, agent or employee be liable for his acts or failure to act under these bylaws, excepting only acts or omissions to act arising out of his willful misfeasance. Any officer or director of this Association or former officer or director of this Association shall be reimbursed against the reasonable expenses actually and necessarily incurred by them in connection with the defense of any action, suit or proceeding in which they or any of them are made parties, or a party, by reason of having been directors or officers of the Association, except in relation to matters as to which such director or officer or former director or former officer shall be adjudged in such action, suit or proceeding to be liable for gross negligence or misconduct in the performance of duty and such matters as shall be settled by agreement predicated on the existence of such liability.

ARTICLE VII

Membership

Section 1

There shall be three classes of membership: Active, Associate/Industry Partner, and Honorary which may be offered by the Board of Directors and may also be revoked at any time in accordance with these bylaws.

- A. Definition of Active Membership: Any Staffing Service or consultant employed by a staffing service legally operating within the bounds of the United States and South Carolina is eligible to apply for active membership.
- B. Definition of Association/Industry Partner Membership: A non-staffing service business entity legally operating within the bounds of the United States and South Carolina.
- C. Definition of Honorary Membership: Retired members of the Association

Section 2

Application for membership shall be made in writing on form described by the Board of Directors and filed under the administrative office. A signed copy of the Association's "Standards of Ethical Practices" shall accompany the application. After appropriate investigation of the business background and credentials of the prospective member and confirmation thereof made to the President or his/her representative, publish to the Association members by the last day of each month, the name and address of every agency making application for membership and any pertinent information bearing on the applicant. Members shall have a period of 15 days in which to raise objections. Objections shall be based upon violation(s) by the applicant firm and/or any of its employees of the SCSA "Standards of Ethical Practices". Any member objecting to the application of the applicant for membership shall send its

written objection to the President and Secretary, and the objection(s) shall be dealt with as set forth in Article XIV of these bylaws. If no objection is raised, in writing, within the 15-day period, membership is granted.

Section 3

Membership shall be held in the name of one Principal, designated as the agency licensee. Each member shall name his/her official representative to the Association.

Section 4

In the event of a change in ownership of an agency, membership in the Association is non-transferable.

Section 5

Active members shall be entitled to one vote at elections and meetings of the Association. Honorary members shall be entitled to all privileges of the membership except voting. Associate members shall be entitled to all privileges of the membership except voting and holding a seat on the Board of Directors and Committee Chairmanship.

ARTICLE VIII

Dues and Assessments

Section 1

Annual membership dues will be determined by majority of the Board of Directors.

Section 2

Assessments may be levied when deemed necessary by a majority vote of the Board of Directors.

Section 3

Members who fail to pay their dues (subscriptions or assessments) within thirty (30) days from the time the same become due shall be notified by a representative of the Board of Directors and if payment is not made within the next succeeding thirty (30) days shall be reported to the Board of Directors as in arrears, and if so ordered by a majority vote of the directors present shall be dropped from the rolls and thereupon forfeit all rights and privileges of membership.

ARTICLE IX

Meetings

Section 1

The Association shall have not less than two meetings annually, a minimum of one in each calendar half of the year, unless otherwise ordered by the Board of Directors. The last scheduled meeting during the second half of the year will be designated the annual meeting at which meeting the Board of Directors and Officers will be elected as prescribed in Article IX, committee reports will be received, and such other business conducted as shall come before the membership. Notice of such meeting, signed by the Secretary (or other officer

designated by the Board of Directors) shall be mailed or emailed to the last recorded address of each member of the association at least 10 days before the time appointed for the meeting.

Section 2

Special meetings of the Association may be called by the President or the Board of Directors, or shall be called by the President upon the written request of one-third of the membership. Notice of any special meetings shall be made by telephone, email or written notice, to each member at the last recorded address to arrive at least ten days in advance with the stated purpose, time and place of the meeting. (Except in case of an emergency, the President or the Board of Directors may waive the 10-day requirement).

Section 3

Active members attending any duly called meeting of the association referred to in Article VIII, Section 1 or Article VII, Section 2 shall constitute a quorum (1/2 plus 1).

Section 4

The order of business may be altered or suspended at any meeting by a majority vote of the members present. The usual parliamentary rules as laid down in “Robert’s Rules of Order” shall govern all deliberations when not in conflict with these bylaws.

ARTICLE X

Nominations and Elections

Section 1

There shall be elected annually at the last scheduled meeting in the second half of the year, President, Vice President, Secretary, Treasurer, Conference Chairman, Regional Directors, Educational Director, and Legislative Director.

Section 2

President, Vice President, Secretary, Treasurer, Conference Chairman, Regional Directors, Educational Director, and Legislative Director and the immediate Past President shall constitute the Board of Directors.

Section 3

In order to provide for continuity of leadership in the affairs of the Association, the Vice-President will serve as President Elect. Unless extenuating circumstances arise, the Vice-President will become President the following year and will not require an additional vote.

Section 4

Nominations for each of the Regional Directors must be made areas of the state designated as Coastal, Midlands, and the Upstate areas in order to guarantee area representation on the Board of Directors. Additional regions may be added by a majority vote of the Board of Directors.

Section 5

Elections shall be by ballot and written proxies of absent members of the association and a majority of the votes cast shall elect.

ARTICLE XI

Board of Directors

Section 1

The Board of Directors shall have supervision, control and direction of the affairs of the Association, shall determine its policies or changes therein within the limits of the bylaws, shall actively prosecute its objects and shall have discretion of its funds. The Board of Directors shall review all receipts and disbursements made by the Treasurer no less than once a year. It may adopt such rules and regulations for the conduct of its business as shall be deemed advisable and may, in the execution of the powers granted, appoint such agents, as it may consider necessary. The term of office for Board Members shall be January 1st through December 31st. All officers will be elected at the last scheduled meeting in the second half of the year.

Section 2

Meetings shall be called by the President at such times and places as he/she may designate or shall be called upon demand of a majority of members of the Board, except that the Board shall have a regular meeting at the time and place of the annual meeting. Notice of all meetings of the Board shall be made by telephone or written notice to each other member of the Board at least ten days in advance of such meetings.

Section 3

There shall be a special “annual Transitional Meeting” held by the incumbent Board of the Directors and the newly elected Board of Directors for the purpose of an orderly and instruction transition of duties, responsibilities, procedures,

information, and general exchange of ideas that will be for the benefit of the new officers and the Association. The meeting shall be at a time and place designated by the newly elected President that will be, conducive to transacting the Association's business, and will be held any time between the time of elections and not later than the following 30th of January, for a period of time to effectively satisfy the purpose of the meeting. Notification of the meeting shall be made to both the old and new Board of Directors by telephone, or by written notice at least ten days in advance of the meeting date.

Section 4

A quorum shall be one half plus one (1/2 plus 1) of the total number of Members on the Board of Directors.

Section 5

Absence of any Board member from a meeting of the Board of Directors shall be notified by the Board member to the President or Secretary 72 hours prior to the meeting. If a Board Member is absent from two consecutive meetings for reasons, which the Board has failed to declare to be sufficient, the resignation of that Board member shall be deemed to have been tendered and accepted.

Section 6

Vacancies that may occur on the Board by the reason of death, resignation or otherwise may be filled by the remaining members of the Board.

ARTICLE XII

Officers

Section 1

The President shall be the chief officer of the organization and shall preside at meetings of the Association and of the Board of Directors, and shall be a member ex officio.

Section 2

The Vice-President shall act as President in the absence of the President with like authority and effect or shall defer to the Treasurer or Secretary.

Section 3

The Conference Chair is primarily responsible for the statewide Conferences. The Conference Chair also oversees the Regional meetings in coordination with the Regional Directors.

Section 4

The Secretary shall give notice of, and attend all meetings of the Association and Board meetings, and keep a record of meeting proceedings; conduct all correspondence and carry into execution all orders, votes and resolutions not otherwise committed; to keep a current list of all members of the Association; and maintain membership records.

The Secretary shall provide a copy of the minutes of all Association and Board meetings to all members of the Board of Directors not later than 30 days after said meetings, and shall be prepared to have a reading of the minutes of the previous meeting at all official meetings of the Association and Board meetings.

Section 5

The Treasurer shall be responsible for depositing all Association funds in a bank or banks or trust company as approved by the Board of Directors and shall be responsible for disbursements of funds for payments of expenses of the Association as authorized and approved by the Board of Directors.

The Treasurer shall be present with the checkbook at the official meetings of the Association and the Board of Directors and shall be prepared to give an accounting of all receipts, expenses and funds of the Association at any official meeting of the Association or the Board of Directors.

The Treasurer shall render a financial statement of expenses, income and balance at the last annual meeting of each year. Funds may be drawn only on the signature of the Treasurer or the President of the Association. The funds, books and vouchers of the Association shall at all times be subject to verification and inspection by the Board of Directors and at the annual transitional meeting, the Treasurer shall instruct the new Treasurer on all procedural matters relative to the duties and responsibilities of the Treasurer's office and shall deliver to the office of the successor, all records, books, money and other property, or in the absence of a successor, to the President of the Association, the Treasurer shall be adequately bonded, at the discretion of the Board of Directors.

ARTICLE XIII

Committees

All standing committees, except where otherwise provided, shall be appointed by the President and shall be presented to the Board of Directors for

ratification within sixty days following the annual election. Except as otherwise provided, each committee shall be composed of not less than three members. Special committees may be appointed from time to time at the discretion of the President.

ARTICLE XIV

Mail Vote

Whenever, in the judgment of the Board of Directors, any question shall arise which it considers should be put to a vote of all active membership and when it so deems it inexpedient to call a special meeting of the membership for such purpose, the Board of Directors may, unless otherwise regulated by these bylaws, submit such matters to the membership in writing by mail for vote and decision, and the question thus presented shall be determined according to a majority of the votes received by mail or email within two weeks after such submission to the membership. Any and all action taken in pursuance of a majority vote in each case shall be binding upon the Association in the same manner, as would be action taken at a duly called meeting.

ARTICLE XV

Resignations and Expulsions

Section 1

Resignations shall be made in writing and sent to the Secretary.

Section 2

Charges against any member or applicant for membership must be made in writing and sent to both the President and the Secretary. Upon receipt of a complaint, the President and Secretary shall refer it to the Chairperson of the appropriate Ethics Committee (Perm/Temp), who shall appoint a Hearing Board of no less than three members to deal with the complaint. If the Hearing Board determines that the complaint alleges a violation by the member complained of, of the SCSA Standards of Ethical Practices, then the Hearing Board shall advise the member complained of, of the allegations against it, and shall provide copies of the complaint to the member. The appropriate Ethics Committee shall schedule a hearing in person or by telephone conference, at its discretion, no less than thirty days and no more than sixty days from the date of its notice to the member concerning the complaint. (In lieu of a hearing, the member shall choose to submit its position solely in writing.) Any member shall have the right to give testimony, present witnesses in its behalf, and examine witnesses who testify against it

Section 3

The Hearing Board shall render a decision in writing to the member and complainants within fifteen (15) days following the hearing. If it is found that the member has violated the SCSA Standards of Ethical Practices, then the Hearing Board may, after due consideration of the severity of the offense, the member's willingness to take corrective action and previous record of compliance or lack of compliance with the Standards of Ethical Practices:

- (a) reprimand the member or members found guilty, and file the complaint with the President for permanent keeping;
- (b) suspend the member's membership for a specific period of time;
- (c) expel the member.

Section 4

The member complained of may appeal the decision of the Hearing Board to the Board of Directors by advising the President and Secretary within fifteen (15) days of his/her receipt of the Hearing Board's decision. The Board of Directors shall review the decision of the Hearing Board at its next regularly scheduled Board of Directors meeting, but in no event less than thirty days following written notice to the member and complaining parties of the time and place of the meeting. At its meeting, the Board of Directors shall review any written documentation or arguments submitted by the member and any complaining parties, as well as the Hearing Board file, and may permit such oral argument or testimony as the Board, in its discretion, determines to permit.

Section 5

The Board of Directors shall render the decision in writing, which shall be final and non-appealable, within fifteen (15) days following its meeting. Any member of the Board of Directors against whom charges have been preferred shall be deprived of his/her vote at any meeting on his/her case.

ARTICLE XVI

Amendments

Section 1

Amendments to these Bylaws may be proposed by the Board of Directors or by any Association member in good standing and must be made in writing to the Board of Directors at least 15 days prior to the date of the meeting at which the amendment is to be considered. Any proposed amendment may be adopted (with such revisions, if any, as the Board deems appropriate) at any meeting of the Board of Directors by a vote of the majority of those present. President will send proposed amendment to the general membership for a vote to be received within 15 days and majority will rule.

ARTICLE XVII

Dissolution

The Association may be liquidated and dissolved on the vote of three-fourths (75%) of the active membership. On dissolution of the Association, any funds remaining shall be distributed to one or more regularly organized and qualified similar-type organizations to be selected by the Board of Directors which are exempt from federal taxation under the U.S. Internal Revenue Code. The Association shall use its funds only to accomplish the objects and purposes specified in its Articles of Incorporation and in its By-Laws, and no part of said funds shall inure or be distributed to the members of the Corporation.

STANDARDS OF ETHICAL PRACTICES

Relations Between Recruiters and Candidates

1. Candidates shall be referred to employer/clients for interviews only on job openings for which at least verbal authority has been given by the employer/client.
2. Representations made to candidates about the duties, probable length of employment, hours, and salary of prospective positions shall be in conformance with the best knowledge of the recruiter.
3. Precaution shall be taken against referring any candidate to employer/clients who are known to engage in illegal or questionable business practices, which might jeopardize the safety of the candidate.
4. Information about a candidate will be used only for the purpose of finding employment for that candidate. Confidential information shall be treated accordingly.
5. A candidate shall be aware of charges, if any, before being permitted to incur any obligation for services rendered. Any monetary obligations, including interest charges, shall be fully disclosed in a written agreement, a copy of which shall be provided to the candidate, and it shall set forth any circumstances in which a candidate must pay for services.
6. No candidate shall be referred to any employer where a strike or lockout exists or is impending (according to the best knowledge of the personnel consultant) without being notified of such condition.

Relations Between Recruiters & Employers/Clients

1. A candidate's employment record, qualification and salary requirements shall be stated to the employer/client as accurately and fully as possible. Clients shall be advised by the recruiter if the recruiter disclaims liability for the accuracy of any information it transmits to the client.
2. A candidate shall be referred to the employer/client for interview only with prior authorization of the employer/client, which may be given verbally.
3. Confidential information relating to the business policy of employer/clients, which is imparted as an aid to the effective handling of their job requirements, shall be treated accordingly.
4. Candidates shall not be solicited for other positions while they are still in the employ with whom they have been placed by the personnel consulting firm in question, unless the candidate initiates reactivation of his/her candidacy.
5. Direct mail, bulletins and resumes of candidates presented to employers shall represent bona fide candidates.
6. In the absence of an agreement to the contrary, candidates will not be directly solicited from a client company within one year of the most recent placement with the same client at the same location.

Relations Between Temporary Services & Temporary Employees

1. Employees shall be assigned to client companies for which a written or verbal job assignment has been given by the client company's representative.

2. Representations to employees about the duties, probable length, hours, salary, bonus, overtime and working conditions of temporary assignments shall be in conformance with the best knowledge of the service.
3. Precautions shall be taken against referring temporary employees to any client who is known to engage in illegal or questionable business practices, which might jeopardize the safety of the temporary employee.
4. Information about temporary employees shall be used only for the purpose of assigning the employee for temporary work. Confidential information shall be treated accordingly.
5. A temporary employee shall be aware of charges, if any, before being permitted to incur any obligation to the temporary service.
6. No temporary employee shall be referred to any client where a strike or lockout exists (according to the best knowledge of the temporary service) without being notified of such condition.
7. Employer financial and legal responsibilities to temporary employees shall be met in a timely manner.
8. Temporary services shall not tolerate harassment of their temporary employees based upon the employee's sex, race, age, religion, national origin, disability, veteran's status or membership in any other protected class, whether the harassment is by co-workers, employees of clients or third parties. No retaliation shall be taken against any temporary employee who makes a complaint based upon a reasonable belief that any such harassment has occurred. When a temporary employee complains about any such harassment, the temporary service shall promptly investigate the complaint, and take all reasonable steps to protect the employee from further harassment.

Relations Between Temporary Services & Clients

1. Temporary employee's experience and qualifications shall be stated as accurately and fully as possible to the extent requested.

2. A temporary employee shall be referred to the client for work assignment only with the prior verbal or written authorization of the client unless other specific arrangement has been made.
3. Confidential information relating to the business policy of the employer, which is imparted as an aid to the effective fulfillment of the job requirements, shall be treated accordingly.
4. Communications, written or verbal, with clients regarding temporary workers shall represent bona fide temporary employees and their qualifications.
5. A temporary service firm shall not induce a client company to breach any terms of any contract he or she might have with another temporary service. A temporary service firm shall not induce an employee or prospective employee to breach any terms of any contracts he or she might have with another temporary service.

Relations Between Personnel Service Firms, Clients, Candidates, Employees & Each Other

1. An applicant or employer who has a complaint about another consulting firm, should be directed to file the complaint with the Chairperson of the Arbitration & Ethics Committee. The firm receiving the complaint should not become involved.
2. The association provides adequate means for assuring adherence by members to its Standards of Ethics. To further the effectiveness of these procedures, each member shall be responsible for bringing to the attention of the Association's Arbitration & Ethics Committee of any violations of these standards. The Arbitration & Ethics Committee shall bring the matter to the attention of the appropriate government authority for its action.
3. A member shall not in the course of advertising, public relations efforts, or any other activity engage in untrue or unfair or misleading criticism of any other personnel service firm.
4. All personnel service firms shall commit to ensure that the workplace is free from discrimination based upon sex, race, age, religion, national origin, non-job-related disability, veteran's status, or membership in any other

protected class. Members of the association shall not knowingly violate any law prohibiting discrimination upon the basis of sex, race, age, religion, national origin, or non-job-related disability.

Advertising

1. Positions listed by placement firms in newspapers or other media shall be factual and refer to bona fide openings available at the time that copy is given to these publications.
2. All advertising promotion of announcements regarding certification must conform to the standards and format of the NAPS Certification Program.
3. Temporary assignments listed in newspapers or other media shall be representative of the types of openings actually available through the temporary service.

Fees

1. No candidate shall be obligated for a placement fee until an offer and acceptance has been made between employer and candidate.
2. Adjustments and refunds of candidate or client fees shall be made promptly, in accordance with the agreement between the personnel service firm and its client or candidate.

General

Members shall cooperate with and permit at any time, complete and thorough investigation of an alleged violation of ethics or standards that tends to reflect on the business practices of the individual service and the association, by the elected officers or duly appointed committee of the South Carolina Staffing Association and shall abide by decisions of the investigative committee.

Note: These standards of ethical practices are in no way to supersede or replace the requirements of local ordinances or state and federal laws.

SOUTH CAROLINA STAFFING ASSOCIATION

P.O. Box 2562

Mt. Pleasant, SC 29465

www.scstaffing.org

ASA CODE OF ETHICS AND GOOD PRACTICES

As a condition of membership in the SC Staffing Association (SCSA), each member pledges its support of, and adherence to, the principles set forth below. Through their voluntary compliance with these principles, SCSA members acknowledge that such compliance is in the best interests of the staffing services industry, its customers, and its employees. SCSA members agree to always strive:

- To comply with all laws and regulations applicable to their business, and to maintain the highest standards of ethical conduct in the operation of that business and in their dealings with employees, customers, and competitors;*
- To treat all applicants and employees with dignity and respect, and to provide equal employment opportunities, based on bona fide job qualifications, without regard to race, color, religion, national origin, sex, age, or disability;*
- To maintain the highest standards of integrity in all advertising, and to assign the best-qualified employees to fill customers' needs;*
- To determine the experience and qualifications of applicants and employees as the staffing firm deems appropriate to the circumstances, or as may be required by law;*
- To explain to employees prior to assignment their wage rate, applicable benefits, and hours of work -- And to promptly pay any wages and benefits due in accordance with the terms of the individual's employment and applicable legal requirements;*
- To satisfy all applicable employer obligations, including payment of the employer's share of social security, state and federal unemployment insurance taxes, and workers' compensation -- And to explain to employees that the staffing firm is responsible for such obligations;*
- To determine that employees are assigned to worksites that are safe, that they understand the nature of the work the customer has called for and can perform such work without injury to themselves or others, and that they receive any safety training that may be necessary or required;*

- *To take prompt action to address employee questions, concerns, or complaints regarding unsafe work conditions, discrimination, or any other matter involving the terms and conditions of their employment;*
- *To observe the following guidelines to ensure an orderly transition when taking over an account being serviced by another staffing firm:*
 - *the outgoing firm and its employees should, whenever feasible, be given reasonable prior notice that the account is being transferred;*
 - *assigned employees of the outgoing firm should, whenever feasible, be allowed to continue working on the payroll of the outgoing firm for some reasonable transition period; thereafter, they should be given the choice of accepting an assignment with another customer of the outgoing firm if one is available, or applying to stay on their current assignment with the new staffing firm.*

These guidelines are not intended to prohibit or discourage any other provisions or arrangements, agreeable to the parties that achieve an orderly transfer of accounts. SCSA members are encouraged, whenever feasible, to specifically address the terms and conditions relating to the transfer of accounts in written agreements with their customers.

SCSA ARBITRATION, BUSINESS PRACTICES, OR ETHICS

COMMITTEE RULES OF PROCEDURE

Types of Dispute

The Committee will resolve complaints that a member has violated the Association's Standards of Ethical Practices, as provided in the Bylaws.

The committee will resolve disputes between two private employment services provided that both services are members of SCSA.

The committee will resolve disputes between a member and a client provided that both parties agree to binding arbitration.

The committee will only arbitrate disputes arising out of the conduct of the employment services business and will not arbitrate employer-employee disputes.

The committee will encourage use of the NAPS Arbitration Committee for disputes involving out-of-state agencies or clients that prefer more distant arbitration than with local association members.

Submission of a Dispute for Arbitration

Each party of the dispute will write to the appropriate SCSA Ethics & Arbitration Committee Chairperson with the particulars of the dispute and the relief they are seeking. The letter/package should include dates, activities, copies of correspondence, invoices, or anything that would document their charges.

The Arbitration Committee Chairperson will review all the charges and documentation. If the Chairperson knows of no reason why the case should not be arbitrated, he will ask each party to sign a standard binding arbitration agreement. (Form SCSA 1001)

The principals in the dispute will be sent a list of 5-6 potential judges; the parties may at this time eliminate any name for possible prejudicial cause. However, they may not contact any of the judges and discuss the matter.

The Arbitration Committee Chairperson will select three judges from those remaining and begin the formal arbitration process. NOTE: Qualification for judges are 1) Member of SCSA in good standing. 2) Certified Personnel Consultant or Certified Temporary Specialist. 3) An owner/manager of agency. 4) Willing to serve impartially with no reimbursement.

The Ethics & Arbitration Committee Chairperson will send each of the judges all of the pertinent documentation from each party, ask for a written response, and give a deadline.

The judges may contact the Ethics & Arbitration Committee Chairperson for advice, and may call the principals or other witnesses in order to reach a decision. Contacts to applicants or client companies should be handled in a very professional and impartial manner. The judges should reach an

independent decision and not consult with any other judge. Judges should not meet with either party to the dispute unless both parties are present.

Each judge will submit his or her written opinion to the appropriate Ethics & Arbitration Committee Chairperson, who will communicate the decision to both parties. In the event that the decision is not clear from the opinions, or there is no majority decision (e.g., the arbitrators have ruled in favor of the same party, but awarded a different amount of money), the Ethics & Arbitration Committee Chairperson will ask the judges to meet with each other until they reach a majority decision. The decision of the judges is final, binding upon the parties and non-appealable. All parties are encouraged to treat the cases as confidential. Further discussion should be limited to a summary of the charge and the outcome, without mentioning the names of the parties involved.

Submission of an Ethics Complaint

When the appropriate Ethics & Arbitration Chairperson receives a complaint that a member has violated the Association's Standards of Ethical Practices, the Chairperson shall appoint a Hearing Board of no less than three members, all of whom are qualified in accordance with Section II-D above.

The appropriate Ethics & Arbitration Committee Chairperson shall designate one of the members of the Hearing Board as Chairman of the panel.

The Hearing Board shall proceed to adjudicate this matter in accordance with the rules and procedures set forth in the By-laws.

SCSA ARBITRATION FORM (Form 1001)

THIS IS TO ACKNOWLEDGE THAT I HAVE DISCUSSED ALL DETAILS REGARDING THE DISAGREEMENT BETWEEN MY AGENCY AND _____, THE OWNER/MANAGER OF _____,

AND THAT WE ARE UNABLE TO ARRIVE AT A REASONABLE SOLUTION: THEREFORE, I AM FORWARDING DETAILS IN WRITING TO THE SCSA ARBITRATION COMMITTEE FOR THEIR REVIEW AND EVALUATION. (ALL PERTINENT FACTS MUST BE INCLUDED AT THE TIME THIS IS SENT TO THE ARBITRATION COMMITTEE, AS ONCE A DECISION HAS BEEN REACHED, THE CASE WILL NOT BE REOPENED WITH ADDITIONAL FACTS BEING PRESENTED.) IN ADDITION, I AM THOROUGHLY FAMILIAR WITH ALL RULES REGARDING SCSA ETHICS AND WILL ABIDE BY THE DECISION RENDERED BY THE ARBITRATION COMMITTEE.

AGENCY OR COMPANY

BY OWNER

DATE

REFERENCE IMMUNITY LAW

SECTION 41-1-65. Employers granted immunity from liability for disclosure of information.

(A) As used in this section:

(1) “Employer” means any person, partnership, for profit or nonprofit corporation, limited liability corporation, the State and its political subdivisions and their agents that employ one or more employees. As used in this definition, “agent” means any former supervisor or the employer’s designee.

(2) “Employee” means any person employed by an employer.

(3) “Evaluation” means a written employee evaluation which was conducted by the employer and signed by the employee, including any written employee response to the evaluation, before the employee’s separation from the employer and of which the employee, upon written request, shall be given a copy.

(4) “Former employee” means an individual who was previously employed by an employer.

(5) “Job performance” includes, but is not limited to, attendance, attitude, awards, demotions, duties, effort, evaluations, knowledge, skills, promotions, and disciplinary actions.

(6) “Prospective employer” means any employer to which a prospective employee has made application, either oral or written, or forwarded a resume or other correspondence expressing an interest in employment.

(7) “Prospective employee” means any person who has made an application either oral or written or has sent a resume or other correspondence to a prospective employer indicating an interest in employment.

(B) Unless otherwise provided by law, an employer shall be immune from civil liability for the disclosure of an employee’s or former employee’s dates of employment, pay level, and wage history to a prospective employer.

(C) Unless otherwise provided by law, an employer who responds in writing to a written request concerning a current employee or former employee from a prospective employer of that employee shall be immune from civil liability for disclosure of the following information to which an employee or former employee may have access:

- (1) written employee evaluations;
- (2) official personnel notices that formally record the reasons for separation;
- (3) whether the employee was voluntarily or involuntarily released from service and the reason for the separation; and
- (4) information about job performance.

(D) This protection and immunity shall not apply where an employer knowingly or recklessly releases or discloses false information.

SECTION 41-1-70. Liability of employer for dismissal or demotion of employee who complies with subpoena or serves on jury.

Any employer who dismisses or demotes an employee because the employee complies with a valid subpoena to testify in a court proceeding or administrative proceeding or to serve on a jury of any court is subject to a civil action in the circuit court for damages caused by the dismissal or demotion.

Damages for dismissal are limited to no more than one year's salary or fifty-two weeks of wages based on a forty-hour week in the amount the employee was receiving at the time of receipt of the subpoena.

Damages for demotion are limited to the difference for one year between the salary or wages based on a forty-hour week which the employee received before the demotion and the amount he receives after the demotion.

SECTION 41-1-80. Prohibition against retaliation based upon employee's institution of, or participation in, proceedings under Workers' Compensation Law; civil actions.

No employer may discharge or demote any employee because the employee has instituted or caused to be instituted, in good faith, any proceeding under the South Carolina Workers' Compensation Law (Title 42 of the 1976 Code), or has testified or is about to testify in any such proceeding.

Any employer who violates any provision of this section is liable in a civil action for lost wages suffered by an employee as a result of the violation, and an employee discharged or demoted in violation of this section is entitled to be reinstated to his former position. The burden of proof is upon the employee.

Any employer shall have as an affirmative defense to this section the following: willful or habitual tardiness or absence from work; being disorderly or intoxicated while at work; destruction of any of the employer's property; failure to meet established employer work standards; malingering; embezzlement or larceny of the employer's property; violating specific written company policy for which the action is a stated remedy of the violation.

The failure of an employer to continue to employ, either in employment or at the employee's previous level of employment, an employee who receives compensation for total permanent disability, is in no manner to be considered a violation of this section.

The statute of limitations for actions under this section is one year.

SECTION 41-1-85. Personnel action based on use of tobacco products outside of workplace prohibited.

The use of tobacco products outside the workplace must not be the basis of personnel action, including, but not limited to, employment, termination, demotion, or promotion of an employee.

SECTION 41-1-90. Requirement of notice that completion of training program does not guarantee employment.

Every employer in this State who requires prospective employees to complete a job training program conducted either by the employer or on behalf of the employer by an outside organization prior to consideration for employment shall give each prospective employee before beginning the training program a notice in the form prescribed by Section 41-1-100 if completion of the job training program does not guarantee the prospective employee regular employment on a permanent basis by the employer.

SECTION 41-1-100. Form of notice required by Section 41-1-90.

The notice required by Section 41-1-90 shall appear on any printed matter promoting the job training program and on every application for enrollment in the program in substantially the following form: “Notice. Completion of this job training program does not guarantee you regular employment on a permanent basis by the employer who requires you to complete the program.”

SECTION 41-1-110. Conspicuous disclaimer of contract of employment created by handbook, personnel manual or other document issued by employer.

It is the public policy of this State that a handbook, personnel manual, policy, procedure, or other document issued by an employer or its agent after June 30, 2004, shall not create an express or implied contract of employment if it is conspicuously disclaimed. For purposes of this section, a disclaimer in a handbook or personnel manual must be in underlined capital letters on the first page of the document and signed by the employee. For all other documents referenced in this section, the disclaimer must be in underlined capital letters on the first page of the document. Whether or not a disclaimer is conspicuous is a question of law.

Chapter 68.

Regulation of Professional Employer Organizations

SECTION 40-68-10. Definitions.

As used in this chapter:

(1) “Applicant” means a business seeking to be licensed under this chapter or seeking the renewal of a license under this chapter.

(2) “Client company” means a person that contracts with a licensee and is assigned employees by the licensee under that contract.

(3) “Administrator” means the administrator of the Department of Consumer Affairs.

(4) “Controlling person” means:

(a) an officer or director of a corporation seeking to offer professional employer services, a shareholder holding ten percent or more of the voting stock of a corporation seeking to offer professional employer services, or a partner of a partnership seeking to offer professional employer services;

(b) an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a company seeking to offer professional employer services through the ownership of voting securities, by contract or otherwise, and who is actively involved in the day-to-day management of the company; or

(c) an individual employed, appointed, or authorized by a business seeking to offer professional employer services to enter into a contractual relationship with a client company on behalf of the business.

(5) “Department” means the South Carolina Department of Consumer Affairs.

(6) “Insured health benefit plan”, for the purposes of this chapter, means a plan offered by an insurer licensed by the Department of Insurance.

(7) “Licensee” means a person licensed under this chapter as a professional employer organization to provide professional employer services. The term includes a professional employer services group licensed under Section 40-68-80.

(8) “Person” means an individual, association, corporation, partnership, or other private legal entity.

(9) “Professional employer services” means an arrangement by which employees of a licensee are assigned to work at a client company and in which employment responsibilities are shared by the licensee and the client company. The employee’s assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature, and a majority of the work force at a client company worksite or a specialized group within that work force consists of assigned employees of the licensee. Professional employer services does not include temporary employees.

(10) “Professional employer organization” means an individual business entity that offers professional employer services.

(11) “Professional employer organization group” means a combination of professional employer services companies that operates under a group license issued under Section 40-68-80.

(12) “Assigned employee” means a person performing services for a client company as affected by a contract between a licensee and client company in which employment responsibilities are shared.

(13) “Entire work force” means all persons engaged by a client company and are employees as defined in Title 42 including persons considered employees under Sections 42-1-400, 42-1-410, and 42-1-420.

SECTION 40-68-20. Department to adopt regulations; Administrative Procedures Act to govern; licensee governed by chapter and regulations.

The department shall adopt regulations necessary to administer this chapter. Regulations must be adopted in compliance with the Administrative Procedures

Act. A licensee is governed and controlled by this chapter and the regulations adopted by the department.

SECTION 40-68-30. License required; application and fee; information required as to each member of group; ineligibility for license for year after denial or revocation of license, with exceptions.

(A) A person may not engage in or offer professional employer services in this State without holding a license issued under this chapter. A person that desires a professional employer organization license shall file with the department a written application accompanied by an application fee of one hundred dollars for each controlling person. In addition, the application fee is two hundred dollars for each professional employer organization, and three hundred dollars for each professional employer organization group.

(B) The department may require an applicant for a license to provide information and certifications to determine whether the applicant meets the licensing requirements of this chapter and also whether individuals affiliated with the applicant are qualified to serve as controlling persons.

(C) A licensee or controlling person shall notify the department within thirty days of any felony conviction or civil judgment entered against the licensee or controlling person.

(D) An application for a professional employer organization group license under Section 40-68-80 must provide the information required by this chapter for each member of the group. An applicant or licensee is ineligible for a license for one year after the date of final departmental action on the denial or revocation of a license applied for or issued under this chapter. This restriction does not apply to a denial or revocation of a license if the basis of the action was:

(1) an inadvertent error or omission in the application if that error or omission is promptly corrected;

(2) the experience documented to the department was insufficient at the time of the previous application;

(3) the department was unable to complete the criminal background investigation required under Section 40-68-40 because of insufficient information received from a local, state, or federal law enforcement agency; or

(4) that one or more of the controlling persons affiliated with the applicant or licensee was determined by the department to be unsuitable, if that unsuitable controlling person has in fact ceased to be a controlling person of the applicant or licensee.

SECTION 40-68-40. Qualifications to serve as controlling person; background investigation; fingerprinting; effect of conviction of crime; designating agent for service of process; minimum net worth requirement.

(A) To be qualified to serve as a controlling person of a licensee under this chapter, a person must be at least eighteen years of age, be of good moral character, and have educational, managerial, or business experience relevant to:

- (1) operation of a business entity offering professional employer services; or
- (2) services as a controlling person of a professional employer organization.

For the purposes of this subsection, “good moral character” means a personal history of honesty, trustworthiness, fairness, a good reputation for fair dealing, and respect for the rights of others and for the laws of this State and nation.

(B) The department shall conduct a background investigation of each individual applicant and of each controlling person of each applicant and require fingerprinting of each applicant and each controlling person to determine whether the applicant or controlling person is qualified under this chapter. The department may deny an application for the issuance or renewal of a license if it finds that a controlling person is not qualified under this chapter. The investigation shall include:

- (1) the submission of fingerprints for processing through appropriate local, state, and federal law enforcement agencies; and
- (2) examination by the department, if necessary, of police or other law enforcement records maintained by local, state, or federal law enforcement agencies.

(C) Conviction of a crime does not automatically disqualify a controlling person, require the revocation of a license, or require the denial of an application for a new or renewed license.

(D) A licensee shall maintain a registered agent for the service of process in this State.

(E) An applicant for an original or renewal license must demonstrate a net worth of at least fifty thousand dollars. The applicant shall demonstrate the net worth to the department by providing the department with the applicant's audited financial statement. The net worth requirement also may be satisfied through guarantees, letters of credit, or other security acceptable to the department in a combined total amount of at least fifty thousand dollars. A guaranty is not acceptable to satisfy this subsection unless the applicant submits sufficient evidence to satisfy the department that the guarantor has adequate resources to satisfy the obligations of the guaranty. For applicants operating a professional employer organization or professional employer organization group on or before January 1, 1991, the net worth requirement will be satisfied by the documentation of a positive net worth.

(F) A document submitted to establish net worth must reflect the net worth as of a date not earlier than six months before the date on which the application is submitted, and must be prepared by a certified public accountant. Information supplied regarding net worth is proprietary and confidential and is exempt from disclosure to third parties.

(G)(1) An applicant and any controlling person must have at least two years of other related industry experience as approved by the department before the initial license is issued.

(2) Notwithstanding subsection (G)(1), an applicant for a nonresident restricted license under Section 40-68-90 may be issued a license without the necessary two years' experience.

(3) However, all licensees filed before September 30, 2005, may act as professional employment organizations after that date without regard to the experience requirement of this subsection if they maintain compliance with the continuing professional education requirements of Section 40-68-45 and otherwise comply with this chapter.

SECTION 40-68-45. Continuing professional education.

(A)(1) Effective for license years beginning after September 30, 2005, key management personnel of all licensees must complete at least eight hours of continuing professional education annually.

(2) For purposes of this subsection:

(a) if the licensee is a sole proprietorship or partnership, “key personnel” means any controlling person, as defined in this chapter, of that licensee.

(b) if the licensee is a corporation, “key personnel” means any person who both:

(i) possesses the power to direct or cause the direction of the management of a company seeking to offer professional employment services in this State; and

(ii) is directly responsible for the day-to-day management of the company’s operations in this State.

(3) The holder of a nonresident restricted license under Section 40-68-90 is not required to complete the continuing education required by this subsection.

(4) Up to eight hours of continuing professional education may be carried forward from one year to the next year; for the license year beginning September 30, 2005, up to eight hours of continuing professional education taken in the preceding twelve months may be carried forward.

(B)(1) Continuing professional education must be reported to the department annually on a form approved by the department showing the date and title of the courses taken, the teacher or sponsor of the course, and the hours of continuing professional education claimed for the course. If the course is taught in a classroom setting, fifty minutes of classroom contact equals one hour of continuing professional education. Course sponsors shall maintain records of attendees for two years after the course.

(2) Documentation of attendance at the courses or correspondence courses must be maintained by the licensee and must consist of a certificate of completion issued by the teacher or sponsor of the course showing the number of hours of continuing professional education completed. This documentation is subject to inspection by the department for up to two years after the date of the course. Courses offered by the National Association of Professional Employer Organizations, the Carolina Chapter of Professional Employer Organizations, the department, or other approved courses related to employment, are considered qualified courses for continuing professional

education. The department shall offer continuing professional education courses to assist licensees and controlling persons in obtaining the continuing professional education required by this chapter.

(3) The department shall appoint four licensees or controlling persons and one representative of the department to a panel for two-year terms to approve any courses questioned as to their qualifications as continuing professional education. The panel may conduct its meetings via conference call. The department shall develop a questionnaire to ascertain the interest and background of potential members of this panel.

(4) If a licensee fails to complete his continuing professional education in a timely manner, his license expires and the licensee shall pay a penalty not in excess of one hundred dollars in order to renew the license. If a controlling person, who is not an owner or officer, of a licensee fails to complete his continuing professional education in a timely manner, he may not continue as a controlling person. However, the licensee or controlling person may request an administrative hearing to appeal the expiration of his license, or controlling person status, respectively, for failure to complete continuing professional education requirements. A license may be renewed without penalty within thirty days after its expiration if the licensee completes his professional education requirement. If a licensee fails to complete his professional education requirement within thirty days after the expiration of his license, he shall, in addition to paying the penalty provided for in this subsection, complete his professional education requirements prior to filing a new initial application for a license.

SECTION 40-68-50. License fees; biennial assessment fee; submission of financial data to ensure compliance.

(A) An applicant for an original or renewal license shall pay a fee to the department on the issuance of the license or license renewal. License fees are assessed as follows:

(1) in the first year of the biennium:

(a) two thousand dollars for a resident professional employer organization;

(b) four thousand dollars for a resident professional employer organization group;

(c) two thousand dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident professional employer organization imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is five thousand dollars for a nonresident professional employer organization;

(d) four thousand dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is ten thousand dollars for each nonresident professional employer organization group;

(2) in the second year of the biennium:

(a) one thousand dollars for each resident professional employer organization;

(b) three thousand five hundred dollars for each resident professional employer organization group;

(c) one thousand dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident professional employer organization imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is two thousand five hundred dollars for a nonresident professional employer organization;

(d) three thousand five hundred dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is five thousand dollars for each nonresident professional employer organization group;

(3) for renewal licenses:

(a) fifteen hundred dollars for a professional employer organization;

(b) three thousand dollars for a professional employer organization group;

(c) fifteen hundred dollars for a nonresident professional employer organization. However, if the state of residency of the nonresident leasing company imposes a greater fee for licensing nonresident applicants, the greater fee must be

assessed. The maximum fee that may be charged is three thousand seven hundred fifty dollars for a nonresident professional employer organization;

(d) three thousand dollars for each nonresident professional employer organization group. However, if the state of residency of the nonresident professional employer organization group imposes a greater fee for licensing nonresident applicants, the greater fee must be assessed. The maximum fee that may be charged is seven thousand five hundred dollars for each nonresident professional employer organization group.

(B) In addition to the license fee, the department may levy a biennial assessment for each professional employer organization and each professional employer organization group sufficient to cover all costs for regulation of the profession pursuant to this chapter and other applicable provisions of law. The biennial assessment fee is:

(1) due and payable upon initial licensure and subsequent renewals and one year before the expiration of any licensure period; and

(2) based on the gross South Carolina payroll, excluding tips and gratuities, of a professional employer organization's or professional employer organization group's clients during the period beginning nine quarters before and ending one quarter before each assessment;

(3) calculated in accordance with the following table:

Amount of Gross	Assessment Fee
South Carolina Payroll	Due
less than \$500,000	\$ 500
\$500,001-\$1,000,000	\$ 750
\$1,000,001-\$2,500,000	\$1,000
\$2,500,001-\$5,000,000	\$1,250
\$5,000,001-\$10,000,000	\$1,750
\$10,000,001-\$15,000,000	\$2,250
\$15,000,001-\$25,000,000	\$3,000

\$25,000,001-\$50,000,000 \$3,750

over \$50,000,000 \$4,000

(C) In order to ensure compliance with the requirements of subsection (B), each licensee annually shall submit a statement of total gross South Carolina payroll, excluding tips and gratuities, along with copies of all South Carolina Unemployment Compensation tax returns for the preceding calendar year.

(D) The total licensure fee and biennial assessments during a licensure period must not exceed:

(1) eight thousand seven hundred fifty dollars for a professional employer organization license; or

(2) ten thousand dollars for a professional employer organization group license issued under Section 40-68-90.

(E) The department may change the anniversary date of the first biennium, as established in regulation 28-910(3)(d), so that approximately one-half of the applications for renewal licenses will be due on or before September 30 of the biennium and the other half on or before March 30 of the following year.

SECTION 40-68-55. Acceptance of affidavit or certification of approval.

The department may by regulation provide for the acceptance of an affidavit or certification of a bonded, independent, and qualified assurance organization that has been approved by the department for certifying qualifications of a professional employer organization or professional employer organization group in lieu of those requirements of Sections 40-68-30 and 40-68-40 or any other requirements of a licensee under this chapter as determined by the department. In the regulation the department may establish a fee structure for the acceptance not to exceed the fees in Section 40-68-50. Professional employer organizations or professional employer organization groups are subject to any assessment under Section 40-68-50(B). This section does not relieve a professional employer organization or professional employer organization group of any notice or disclosure obligations under this chapter to an insurer, client, or employee, or of any other requirement of this chapter not expressly waived by regulation of the department.

SECTION 40-68-60. Terms of agreement to be established and in writing; notice and delivery of notice to assigned employees; posting of notice by client company; notice or knowledge of injury.

(A) A licensee shall establish the terms of a professional employer organization services agreement by a written contract between the licensee and the client company. The licensee shall give written notice of the agreement as it affects assigned employees to each employee assigned to a client company in the manner provided in this section.

(B) A written explanation of the agreement must be provided to each assigned employee by delivering it to the employee personally within ten days after executing the agreement. The explanation must state, substantially, the terms of the agreement between the licensee and client company and include the same notice that is required to be posted in the client company's place of business.

(C) The client company shall post in each of its places of business in a conspicuous place that is in clear and unobstructed view of the assigned employees a notice stating, substantially, the following:

“We are operating under and subject to the Workers’ Compensation Act of South Carolina. In case of accidental injury or death to an employee, the injured employee, or someone acting on his or her behalf, shall notify immediately (insert name of professional employer organization, address, and telephone number) or (name of client company, address, and telephone number). Failure to give immediate notice may be the cause of serious delay in the payment of compensation to you or your beneficiaries and may result in failure to receive any compensation benefits”.

(D) As between the client company, the professional employer organization, and the employee, the notice to or acknowledgment of the occurrence of an injury on the part of the client company or the professional employer organization is notice to or knowledge on the part of the professional employer organization and its workers’ compensation insurer or the client company and its workers’ compensation insurer, or both.

SECTION 40-68-70. Requirements of contract between licensee and client company; investigation of client company's work force; securing workers' compensation insurance coverage; licensee is employer of assigned employees.

(A) A contract between a licensee and a client company must provide that the licensee:

(1) reserves the right of direction and control over employees assigned to a client company;

(2) assumes responsibility for the payment of wages to the assigned employees without regard to payments by the client to the licensee;

(3) assumes responsibility for the payment of payroll taxes and collection of taxes from payroll on assigned employees;

(4) retains the right to hire, fire, discipline, and reassign the assigned employees;

(5) retains the right of direction and control over the adoption of employment and safety policies and the management of workers' compensation claims, claim filings, and related procedures on joint agreement by the client company and the licensee; and

(6) agrees that:

(a) notice to or acknowledgment of the occurrence of an injury on the part of the client company is notice to or knowledge on the part of the licensee and its workers' compensation insurer;

(b) for the purposes of Title 42, the jurisdiction of the client company is the jurisdiction of the licensee and its workers' compensation insurer;

(c) the licensee and its workers' compensation insurer is bound by and subject to the awards, judgments, or decrees rendered against them under the provisions of Title 42; and

(d) insolvency, bankruptcy, or discharge in bankruptcy of the licensee or client company does not relieve the licensee, client company, their respective workers' compensation insurers from payment of compensation for disability or death sustained by an employee during the life of a workers' compensation insurance policy; and

(7) with a client company, in the contract, shall specify whether the licensee, the client company, or both, are securing workers' compensation liability.

(B) A licensee, who secures workers' compensation insurance for a client company before the execution of the contract and on an annual basis, shall conduct a good faith investigation of the client company's business. The investigation must determine if the client company engages any nonassigned employees, including those considered employees under Title 42, in any part of the client company's trade, business, or occupation. Upon a determination that a client company's entire work force includes nonassigned employees, the contract must require the client company to secure and maintain workers' compensation insurance.

(C) Upon the failure or neglect of a client company to secure and maintain workers' compensation insurance, the licensee and its workers' compensation carrier agree and are liable to pay to a worker employed in the work of the client company compensation under Title 42 which the licensee would have been liable to pay if the worker had been employed by the licensee as provided in Section 40-68-120.

(D) A licensee's workers' compensation insurer providing coverage to a client company's assigned employees must be provided the information derived from the licensee's investigation of the client company's business.

(E) The licensee is the employer of the employees assigned to a client company. The rights and remedies granted by Title 42 to an employee when he and the licensee have accepted the provisions of Title 42 to pay and accept compensation exclude all other rights as provided in Section 42-1-540. This chapter does not affect the rights, duties, or liabilities of licensees, client companies, or employees under federal law.

SECTION 40-68-75. Responsibilities of client company with respect to workers' compensation insurance; penalties and liabilities for violation.

(A) An employer subject to the provisions of Title 42 who contracts with a professional employer organization or professional employer organization group continues to be subject to the provisions of Title 42 and shall comply with Title 42 with regard to procuring and maintaining workers' compensation insurance for nonassigned employees. For purposes of construction, the term "employees" in Section 42-1-360 includes both assigned and nonassigned employees.

(B) A client company who refuses or neglects to provide workers' compensation insurance coverage to its nonassigned employees must be fined one thousand dollars a day for each nonassigned employee for each day the client company refuses or neglects to provide workers' compensation insurance. In this event, the client company is liable during the continuance of the refusal or neglect to an employee either for compensation under Title 42 or in an action at law instituted by the employee or his personal representative against the client company to recover damages for personal injury or death by accident. In the action at law, the client company may not be permitted to defend upon any of the grounds mentioned in Section 42-1-510 and Section 42-1-540 does not apply. The fine provided in this section must be assessed by the Workers' Compensation Commission in an open hearing with the right of review and appeal as in other cases.

SECTION 40-68-80. Licensing of multiple companies owned by same entity as professional employer organization group; joint liability.

A group of at least two but not more than five professional employer organizations that are majority owned by the same entity may be licensed as a professional employer organization group. A professional employer organization group may satisfy the reporting and financial requirements of the chapter on a consolidated basis. As a condition of the issuance of a professional employer organization group license, each person that is a member of the group must guarantee payment of all financial obligations of other members of the group.

SECTION 40-68-90. Nonresident company or group; restricted license; appointment of entity for receipt of legal process.

(A) The department may issue a restricted license to a nonresident professional employer organization or professional employer organization group for limited operation within this State under the following conditions if the:

(1) applicant's state of residence provides for licensing of professional employer organizations, the applicant is licensed and in good standing in its state of residence, and the applicant's state of residence grants a similar privilege for

restricted licensing to professional employer organizations or professional employer organization groups that are residents in South Carolina;

(2) applicant does not maintain an office, sales force, or representatives in this State, and it does not solicit clients that are residents in this State; and

(3) applicant does not have more than forty leased employees working in this State.

(B) An applicant for a restricted license is exempt from the requirements of Section 40-68-40(F).

(C) An applicant for a nonresident or restricted license shall file on a form approved by the department an appointment of a recognized and approved entity as its attorney to receive service of legal process issued against it in this State.

SECTION 40-68-100. Duty to issue license to qualified applicants; issuance within prescribed time; time license is valid; renewal.

The department shall issue a license to an applicant that meets the requirements of this chapter. The license must be issued not later than the ninetieth day after the date on which the completed application is filed with the department. A license issued by the department under this chapter is valid for two years. The department shall renew a license on receipt of a renewal application approved by the department and payment of the required renewal fees.

SECTION 40-68-110. Disclosure by licensee of information as to insurance or benefit plans for benefit of assigned employees; other reports may be required by regulation.

(A) A licensee shall disclose to the department, each client company, and its assigned employees information relating to any insurance or benefit plan provided for the benefit of its assigned employees. Benefit plan information must be provided to the assigned employees and the assigned employees shall

sign a statement disclosing they have read and understand the benefit plan information prior to enrollment of assigned employees into the plan. The information must, at a minimum, include:

- (1) the type of coverage;
- (2) the identity of each insurer for each type of coverage;
- (3) the amount of benefits provided for each type of coverage and to whom or on whose behalf benefits are to be paid;
- (4) the policy limits on each insurance policy;
- (5) whether the coverage is fully insured, partially insured, or fully self funded; and
- (6) other information, such as full disclosure of deductibles or co- payments.

(B) With respect to any insurance or benefit plan provided by a licensee for the benefit of its assigned employees, the licensee shall provide to the assigned employees the name and address of the insurance agent or broker responsible for securing the policy of insurance on behalf of the licensee.

(C) The licensee shall disclose to the department whether the coverage is fully insured, partially insured, or fully self funded. This provision does not in any way endorse or approve the sponsoring of partially insured or self funded benefit plans by a licensee, as these plans may not be sponsored, offered, endorsed, or otherwise proffered by a licensee.

(D) The licensee shall notify the client company and the department in writing about a discontinuance and replacement, if any, of any health plan or workers' compensation insurance coverage no later than ten business days after the discontinuance and before offering any replacement policy.

(E) The administrator by regulation may require the filing by licensees of other reports necessary to the implementation of this chapter.

SECTION 40-68-120. Licensee's obtaining of workers' compensation coverage; licensee sponsored and client sponsored benefit plans for assigned employees; unemployment taxes; notification of start and end of relationship with client company.

(A) A licensee may elect to obtain workers' compensation insurance coverage in the same manner as any other employer as provided for in this subsection:

(1) An insurer issuing the policy must be licensed in this State to write such policies.

(2) An insurer issuing a policy of workers' compensation insurance to a licensee may not plead as a defense:

(a) that the client company is not subject to Title 42. The insurer is stopped to deny coverage;

(b) lack of an employment relationship between a person engaged in an employment as defined in Title 42 and the client company;

(c) breach of contract by the licensee or client company. The insurer is not entitled to plead as a defense to an employee's claim for benefits any defects in the performance of a contract between the licensee and client company.

(3) No policy of insurance against liability arising under Title 42 may be issued to a licensee unless the policy contains the agreement of the insurer that the insurer will promptly pay to the persons entitled to them all benefits conferred by Title 42 and all installments of the compensation that may be awarded or agreed upon and that the obligation is not affected by default of the licensee or client company or by default in giving notice required by the policy or otherwise.

(4) A policy of insurance issued to a licensee is, and must be construed as, a direct promise by the insurer to the person entitled to compensation enforceable in his name.

(5) The insurer agrees that:

(a) notice to or acknowledgment of the occurrence of an injury on the part of the client company is notice to or knowledge on the part of the licensee and its workers' compensation insurer;

(b) for purposes of Title 42, the jurisdiction of the client company is the jurisdiction of the licensee and its workers' compensation insurer;

(c) the licensee and its workers' compensation insurer, in all things, are bound by and subject to the awards, judgments, or decrees rendered against them under the provisions of Title 42; and

(d) insolvency, bankruptcy, or discharge in bankruptcy of the licensee or client company does not relieve the workers' compensation insurer from the payment of compensation for disability or death sustained by an employee during the life of a workers' compensation insurance policy issued to the licensee.

(6) No agreement by an employee to pay a portion of a premium paid by the licensee or client company to an insurer or to contribute to a benefit fund or department maintained by a licensee or client company for the purpose of providing insurance under Title 42 is valid, and any licensee or client company who makes a deduction for the purpose from the pay of an employee entitled to benefits under Title 42 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars plus reimbursement to the employee of the deductions.

(7) When a person referred to as a licensee undertakes to provide assigned employees to a client company, the licensee is liable to pay a worker employed by the client company compensation under Title 42 which the licensee would have been liable to pay if the worker had been immediately employed by the licensee. When the licensee is liable to pay compensation under this section, it is entitled to indemnity from a client company who would have been liable to pay compensation to the worker independently of this section and have a cause of action for indemnity. This section must be construed to require that a licensee's workers' compensation carrier is liable to pay compensation to the client company's entire work force with the licensee and carrier's right to indemnity from the client company.

(B) If workers' compensation coverage is obtained, that insurance must comply with the applicable provisions of the insurance laws of this State.

(C) A licensee is entitled to the same rights to obtain all types of insurance coverage, including endorsements obtained by other business entities doing business in this State.

(D) For companies who have obtained workers' compensation insurance coverage in the residual (assigned risk) market, the first three years that a client company has a contract with a licensee, the licensee shall pay workers' compensation insurance premiums based on the experience modification rate of the client company. The South Carolina Department of Insurance shall adopt regulations to implement this subsection. This subsection applies only to the residual (assigned risk) market.

(E) The licensee must categorize leased employees according to their classification within a client company.

(F) A licensee and client company both are deemed an employer and may sponsor and maintain benefit plans for assigned workers. An employee health benefit plan sponsored by a licensee for the benefit of assigned employees must be an insured health benefit plan offered by an insurer licensed under Title 38. The employee health benefit plans provided by a licensed insurance provider, including the use of third party administrators, must comply with the applicable provisions of the insurance laws of this State and other federal law, including The Employment Retirement Income Security Act (ERISA), 29 USC Section 101, et seq. No licensee may maintain, sponsor, offer, endorse, or otherwise proffer self insured, self funded, or other plans for health benefits, that are not licensed with the Department of Insurance.

(G) Notwithstanding subsection (F), a client company may include assigned employees in a benefit plan sponsored and maintained solely by the client company for its own employees, as long as the benefit plan complies with Title 38 and federal law including ERISA.

(H) A professional employer organization or professional employer organization group is responsible for the payment of unemployment taxes pursuant to law.

(I) Licensees, within thirty days, shall notify the South Carolina Employment Security Commission and the department of the start and termination of the licensee's relationship with a client company.

SECTION 40-68-130. Form and content of licenses and notices; display.

(A) The department by regulation shall determine the form and content of:

(1) the licenses issued under this chapter; and

(2) notices required to be posted under this section.

(B) The license issued under this chapter must be posted in a conspicuous place in the principal place of business in this State of the licensee. The licensee shall display, in a place that is in clear and unobstructed public view, a notice stating that the business operated at the location is licensed and

regulated by the department and that any questions or complaints should be directed to the department.

SECTION 40-68-140. Name under which business may be conducted; change of name or of location of primary office or records; addition of business offices; license not assignable.

(A) A licensee may not conduct business under a name other than that specified in the license. A license issued under this chapter is not assignable. A licensee may not conduct business under any fictitious or assumed name without prior written authorization from the department. The department may not authorize the use of a name that is so similar to that of a public office or agency or to that of another licensee that the public may be confused or misled by its use. A licensee may not conduct business under more than one name unless it has obtained a separate license for each name.

(B) A licensee may change its licensed name at any time by notifying the department and paying a fee for each change of name. The department by regulation shall set the fee for each name change in an amount not to exceed fifty dollars. A licensee may change its name on renewal of the license without the payment of the name change fee.

(C) A licensee must notify the department in writing of:

(1) a change in the location of its primary business office;

(2) the addition of more business offices; or

(3) a change in the location of business records maintained by the licensee.

SECTION 40-68-150. Prohibited acts; operation without license; wrongful use of title or representation of being licensed; use of forged or false information to obtain license or in disciplinary proceeding; use of expired or revoked license; penalties.

(A) A person may not:

(1) engage in professional employer services without holding a license under this chapter as a professional employer organization or a professional employer organization group;

(2) use the name or title “staff leasing services company”, “licensed staff leasing services company”, “licensed staff leasing services group”, or “professional employer organization”, “licensed professional employer organization”, “licensed professional employer organization group”, “ professional employer organization group”, “staff leasing services group”, or otherwise represent that it is licensed under this chapter, unless the entity holds a license issued under this chapter;

(3) represent as the person’s own the license of another person or represent that a person is licensed if the person does not hold a license;

(4) give false or forged evidence to the department in connection with obtaining or renewing a license or in connection with disciplinary proceeding under this chapter;

(5) use or attempt to use a license that has expired or been revoked;

(6) offer an employee a self funded, self insured, or other employee benefit plan not licensed under Title 38, unless the program is maintained by the client company individually for the sole benefit of participating employees of the client company; or

(7) misrepresent that any self funded, self insured, or unlicensed benefit plans are licensed under Title 38 or otherwise in compliance with ERISA.

(B) A person who voluntarily violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than fifty thousand dollars, or both.

SECTION 40-68-155. Investigation of complaints.

When a complaint is filed against a licensee with the department regarding any insurance issue, the Department of Insurance shall investigate the complaint.

SECTION 40-68-160. Disciplinary action; grounds; sanctions; notice, hearing, and other provisions of Administrative Procedures Act applicable; reinstatement.

(A) For the purposes of this section, “ conviction” includes a plea of guilty or nolo contendere or a finding of guilt.

(B) The department may take disciplinary action against a licensee, or a person engaging in professional employer services without a license, on any of the following grounds:

(1) the conviction of a licensee or a controlling person of a licensee of bribery, fraud, or intentional or material misrepresentation in obtaining, attempting to obtain, or renewing a license;

(2) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the operation of a professional employer organization or the ability of the licensee or a controlling person of a licensee to operate a professional employer organization;

(3) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the classification, misclassification, or under-reporting of employees under the South Carolina Workers’ Compensation Act;

(4) the conviction of a licensee or a controlling person of a licensee of a crime that relates to the establishment or maintenance of a self insurance program, whether health insurance, workers’ compensation insurance, or other insurance;

(5) the conviction of a licensee or a controlling person of a licensee of a crime that relates to fraud, deceit, or misconduct in the operation of a professional employer organization;

(6) engaging in professional employer services without a license;

(7) transferring or attempting to transfer a license issued pursuant to this chapter;

(8) violating this chapter or an order or regulation issued by the department pursuant to this chapter;

- (9) failing to notify the department, in writing, of the civil judgment or felony conviction of a controlling person not later than the thirtieth day after the date on which the judgment or conviction is entered;
- (10) failing to cooperate with an investigation, examination, or audit of the licensee's records conducted by the licensee's insurance company or its designee, as provided by the insurance contract or as authorized by law by the South Carolina Department of Insurance;
- (11) failing to notify the department and the South Carolina Department of Insurance not later than the thirtieth day after the effective date of a change in ownership, principal business address, or the address of accounts and records;
- (12) failing to correct a tax filing or payment deficiencies within a reasonable time as determined by the department;
- (13) refusing, after reasonable notice, to meet reasonable health and safety requirements within the licensee's control and made known to the licensee by a federal or state agency;
- (14) failing to correct a delinquency in the payment of the licensee's insurance premiums within a reasonable time;
- (15) failing to correct a delinquency in the payment of an employee benefit plan premiums or contributions within a reasonable time;
- (16) knowingly or without sufficient inquiry, maintaining, sponsoring, offering, endorsing, or otherwise proffering self insured, self funded, or other employee benefit plans that are not licensed by the Department of Insurance;
- (17) knowingly making a material misrepresentation to an insurance company, to the department, or other governmental agency;
- (18) adverse final action by a state or federal regulatory agency for violations within the scope or control of the licensee;
- (19) failure to inform the department in writing within thirty days of an adverse final action by a state or federal regulatory agency; or
- (20) in case of a professional employer organization or group that has qualified for licensing pursuant to Section 40-68-55, the failure to notify the department within thirty days of any change in the status of its certification with the independent and qualified assurance organization.

(C) Upon finding that a licensee has violated one or more provisions of this section, the department may:

(1) deny an application for a license;

(2) revoke, restrict, suspend, or refuse to renew a license;

(3) impose an administrative penalty in an amount not less than one thousand dollars for each violation, but not more than fifty thousand dollars;

(4) issue a reprimand;

(5) issue a cease and desist order; or

(6) place the licensee on probation for a period and subject to conditions and restrictions that the department specifies.

(D) On revocation, or suspension of a license, the licensee immediately shall return the license to the department and may not:

(1) solicit any new clients; or

(2) enter into or execute any additional contracts for professional employer services.

(E) Disciplinary action, a denial of an application for a new or renewal license, a revocation or suspension of a license, or a determination that a controlling person is unqualified may occur subject to the Administrative Procedures Act, with notice to, and an opportunity for a hearing by, the affected applicant, licensee, or controlling person. All contested hearings pursuant to this section are before the Administrative Law Court.

(F) If a license is revoked or renewal is denied, the affected licensee may request a reinstatement hearing after a minimum of one year. The department may reinstate or renew the license only if the cause of the nonrenewal or revocation has been corrected.

(G) A licensee who is found to be engaged in unlawful conduct may be assessed the reasonable costs necessary to the investigation, disciplinary proceedings, court proceedings, or other actions to enforce the provisions of this chapter.

SECTION 40-68-165. Enforcement by Attorney General.

The department or the Attorney General may file an action in circuit court to enforce the provisions of this chapter.

SECTION 40-68-170. Fees to be used to implement provisions of chapter.

All fees collected by the department under this chapter must be used to implement the provisions of this chapter.

SECTION 40-68-180.

This chapter does not exempt a client of a licensee or an assigned employee from any other license requirements imposed under local, state, or federal law. An employee who is licensed, registered, or certified under law and who is assigned to a client company is an employee of the client company for the purpose of that license, registration, or certification, but otherwise remains the employee of the licensee as provided in this chapter. Nothing in this chapter affects the South Carolina Employment Security Law (Sections 41-27-10 through 41-41-50).

Chapter 25.

Private Personnel Placement Services

SECTION 41-25-10. Short title.

This chapter may be cited as the “South Carolina Private Personnel Placement Services Act”.

SECTION 41-25-20. Definitions.

For the purposes of this chapter:

(a) “Secretary” means the Secretary of State or his designated representative.

(b) “Private Personnel Placement Service” includes any person who charges fees, whether direct or indirect, all or any part of which may be in consideration of the person providing information on employment opportunities, procuring or attempting to procure employment for applicants seeking employment, and for procuring or attempting to procure employees for employers seeking applicants, regardless of what the services are called, which must include, but not be restricted to, job listing services, employment information centers, executive search firms, outplacement services, career counseling services, consultants, or resume services that perform job market sourcing for applicants, corporate or private business services, and other professional consultants and all who market or advertise personnel services on a “third party” basis, unless covered under other provisions of law.

(c) “Private Personnel Placement Service” does not include:

(1) Any placement office conducted by an incorporated bar association, hospital, association of registered professional nurses, registered medical institution, or by an incorporated association or society of professional engineers, or by an incorporated association or society of land surveyors, or by an incorporated association or society of registered architects;

(2) Any organization operated by or under the exclusive control of a bona fide nonprofit educational, religious, charitable, or eleemosynary institution;

(3) Temporary help services;

(4) Any organization operated by a governmental authority.

(d) "Placement fee" means any thing of value, paid, or directed to be paid, including retainer fees for providing information on employment opportunities, for the service of procuring or attempting to procure employment for persons seeking employment, or for procuring or attempting to procure employees for employers seeking applicants, or charges by persons performing services as defined in item (b) of this section.

(e) "Person" means any individual, company, society, association, corporation, manager, contractor, subcontractor, partnership, bureau, agency, service, office, or the agent or employee of the foregoing.

(f) "Applicant" means anyone performing or seeking to perform work, service, or labor of any kind and who had for this purpose visited or been in contact with a Private Personnel Placement Service.

(g) "Employer" means any person who engages or who seeks to engage applicants for employment.

SECTION 41-25-30. License required; application for license; fee; bond; claims against licensee; service of summons; place of operation of agency; no license to issue where previous application denied or license revoked.

(A) No person or firm may engage in the private personnel placement service business in South Carolina unless the person or firm has a current license for the business as provided in this chapter.

(B) An application for license must be made to the Secretary for each location. If the agency is owned by:

- (1) an individual, the application must be made by him;
- (2) a partnership, the application must be made by all of the partners;
- (3) a corporation, an association, or a society, the application must be made by the president, vice president, secretary, and treasurer and by a person owning twenty percent or more of the stock.

(C) Each application must be written and in a form prescribed by the Secretary and must contain:

- (1) the name and address of the applicant;
- (2) the name under which the agency is to be conducted;
- (3) the street and number of the building or place where the business is to be conducted;
- (4) the business or occupations engaged in by the applicant previously;
- (5) whether the applicant has previously held or applied, whether granted or denied, for a private personnel placement service license within the United States or its possessions or territories;
- (6) the name and address of the individual who actually will direct and operate the placement activities;
- (7) the name and present address of the last employer of the individual;
- (8) a verification from a newspaper of the greatest circulation in the county of the applicant's location that a public notification containing the information required in the application has been included in the newspaper on at least one occasion before the filing;
- (9) a certification by a licensed member of the South Carolina Bar that all requirements of the laws of South Carolina have been met.

(D) The application must be accompanied by an application fee of two hundred dollars and a license fee of one hundred dollars and verification of a surety bond of three thousand dollars or other security equal to twenty-five thousand dollars in a form approved by the Attorney General and deposited with the

Secretary. The Secretary shall issue a license after thirty days following receipt of the application unless there is a reason for the Secretary to believe on the basis of a complaint and investigation that the applicant is not in compliance with this chapter. The application for a license must be denied and the license fee refunded if the Secretary determines that the applicant is not in compliance. The application fee must not be refunded.

(E) The aggregate liability of the surety for all breaches of the bond may not exceed the sum of the bond. The surety on the bond may cancel the bond upon giving thirty days written notice to the Secretary and the Private Personnel Placement Service and is relieved of liability for a breach of condition occurring after the effective date of the cancellation. Failure to maintain a surety bond in force or have other security filed with the Secretary of twenty-five thousand dollars constitutes disqualification for retaining a license. The Secretary shall allow ten working days after notification to the licensee for requalification before revoking that license. The business may not operate until proof of surety bond, or other security of twenty-five thousand dollars, has been established with the Secretary.

(F) Licenses are issued for two years beginning January first through December thirty-first twenty-four months later unless turned in or revoked by the Secretary. Licenses must be renewed biennially.

(G) The Secretary shall mail annual license renewal forms to the last known address of each licensee by November first. If license renewal forms are not received by a licensee for any cause, the licensee shall request a license renewal form from the Secretary's office. Every licensee shall file a biennial license renewal in a form and manner suitable to the Secretary postmarked not later than the last day of December. The renewal form must be accompanied by a renewal fee of one hundred dollars. If license renewal forms are not received by the Secretary's office the first week of January, the Secretary shall notify the licensee in writing that the licensee shall pay a one hundred dollar late penalty and that the licensee has thirty days from the date of notice to comply with licensing requirements. If compliance is not met within the specified time, the Secretary shall deny license renewal, return the license fee, and notify that business to cease operation and make public notification of closure of the service in the newspaper of the greatest circulation in the county in which it is located.

(H) If a written complaint by a person to the Secretary reveals that a licensee or firm is not in compliance with Section 41-25-30, the Secretary shall notify the licensee or firm of the alleged violation in writing and allow thirty days from the date of notice for response to and compliance with this chapter. If no response is received within thirty days, the Secretary shall investigate the alleged

violation, and if the licensee or firm is found to be in violation of this chapter, deny or revoke that license.

(I) All claims or suits brought against a licensee may be brought in the name of the person damaged upon the bond deposited with the Secretary and may be transferred and assigned as other claims for damages in civil suits. The amount of damages claimed by the plaintiff, and not the penalty designated in the bond, determines the jurisdiction of the court in which the action is brought. If a licensee has departed from the State with intent to defraud his creditors or to avoid the service of a summons in an action brought under this section, service must be made upon the surety. A copy of the summons must be mailed to the last known post office address of the residence of the licensee as shown by the records of the Secretary. The service is deemed to be made when not less than the number of days has intervened between the date of service and the return of the same as provided by law.

(J) No license may be granted to conduct a private personnel placement service in a residence or rooms used for living purposes, where boarders or lodgers are kept, where meals are served, where persons sleep, or, in connection with a building or premises, where intoxicating liquors are sold to be consumed on premises, except cafes and restaurants in office buildings.

However, if the licensee has maintained a South Carolina State Placement Service license for three consecutive years, or has attained the national CPC designation, including two years of service, the licensee may be licensed to operate from a private residence if desired but must be in accordance with other applicable federal, state, and local laws and zoning ordinances. In addition, a person who is handicapped or incapacitated for a period of time could be allowed a waiver for that period of time to work from a private residence.

(K) No license may be issued if the applicant has had a previous application which was denied or a license which has been revoked within the United States or its possessions or territories. No person may own, wholly or in part, nor manage a private personnel placement service who previously has been denied or had revoked his license to operate a private personnel placement service within the United States or its possessions or territories. The Secretary, depending upon the seriousness of the offense causing the denial or revocation of the license, after a suitable period of three months to one year, may allow the person, upon full compliance, to reapply for a license.

(L) If a licensee relocates its offices before filing the annual renewal notice, he shall submit a written notice of the change of address to the Secretary

containing a notarized statement that the new location conforms to licensing requirements.

(M) If a licensee ceases to operate or goes out of business, he shall notify the Secretary in writing of the action and return the license to the Secretary.

(N) If a business is sold to a new owner, the previous owner shall notify the Secretary in writing of the action and return the license to the Secretary and state to whom the business is being sold. That business may not operate until the new owner has obtained a new license.

(O) Private Personnel Placement Services licenses are nontransferable absolutely and unconditionally.

SECTION 41-25-35. Registration periods for biennial licenses; proration of fees during conversion to biennial cycle; renewals.

(A) Licenses required by this chapter to be registered biennially must be assigned registration periods as provided in this section.

(1) Upon the first reregistration of the licenses by the South Carolina Secretary of State's Office after the effective date of biennial licensure, a biennial registration period must be implemented as follows:

(a) Licenses whose license numbers end in:

(i) an even number and expire between July 1, 1992, and December 31, 1992, shall obtain a biennial registration;

(ii) an even number and expire between January 1, 1993, and June 30, 1993, shall reregister their licenses for one year. At the end of that time they shall reregister their license for two years and biennially;

(iii) an odd number and expire between July 1, 1992, and December 31, 1992, shall register their licenses for one year. At the end of that time they shall register their license for two years and biennially;

(iv) an odd number and expire between January 1, 1993, and June 30, 1993, shall obtain a biennial registration;

(v) "A" through "L" and expire between July 1, 1992, and June 30, 1993, shall obtain a biennial registration;

(vi) "M" through "Z" and expire between July 1, 1992, and June 30, 1993, shall obtain a one year registration and obtain a biennial registration after that time;

(b) Licenses issued in South Carolina for the first time between:

(i) July 1, 1992, and December 31, 1992, which end in an even number must be issued biennially;

(ii) July 1, 1992, and December 31, 1992, which end in an odd number must be issued for one year. At the end of that time the license must be renewed for two years and biennially after that time;

(iii) January 1, 1993, and June 30, 1993, which end in an even number must be issued for one year. At the end of that time the license must be renewed for two years and biennially after that time;

(iv) January 1, 1993, and June 30, 1993, which end in an odd number must be issued biennially;

(v) July 1, 1992, and June 30, 1993, and issued license numbers which end in 'A' through 'L' must be issued biennially;

(vi) July 1, 1992, and June 30, 1993, and which end in "M" through "Z" must be issued for one year and renewed biennially after that time.

(2) Registrations are valid until the last day of the month in which the registration expires. The license fees charged during the conversion process must be prorated for the length of the license issued.

(B) After June 30, 1993, all licensees must be registered and licensed for twenty-four consecutive months, and the registrations expire on the last day of the twenty-fourth month. The registration and licensing of every licensee must be renewed biennially upon application by the holder and by payment of fees required by law to take effect on the first day of the month following the expiration of the registration and licensing to be renewed. This section does not prevent the Secretary of State's Office from refusing to issue a license.

SECTION 41-25-40. Duties of licensees.

Every licensed private personnel placement service in the State shall:

- (a) Openly and in a place accessible to applicants and employees alike, display the license.
- (b) Make available to each applicant a copy of every contract between the private personnel placement service and the applicant which shall have printed on it or attached to it a copy of the fee and placement fee schedules.
- (c) Guarantee, to the applicant through contractual agreement between the private personnel placement service and the applicant who pays a placement fee, every job placement for a minimum period of ninety calendar days. Should the position end in less than ninety calendar days, regardless of the cause for termination, the fee or service charge for services rendered must be adjusted to and shall not exceed the amount of the original fee prorated over ninety calendar days from the beginning date of employment. Should the applicant not report for work, regardless of the reason, there may be no fee charged to the applicant.

SECTION 41-25-50. Prohibited activities or conduct of personnel agencies.

Any person who acts as a private personnel placement service in the State, or his employees may not:

- (a) Knowingly induce or attempt to induce any employee it has placed to leave that employment unless it is requested to do so by the employee and he has first contacted the private personnel placement service.
- (b) Knowingly publish or cause to be published any false, fraudulent, or misleading information, representation, promise, notice, or advertisement.
- (c) Knowingly refer any employee or applicant for employment to a place where a strike or lockout exists without furnishing the employee or applicant with a written statement as to the existence of the strike or lockout, if the agency had knowledge of the facts.

(d) Knowingly send or cause to be sent any applicant to any place the private personnel placement service knows or reasonably should have known is maintained for immoral or illicit purposes.

(e) Impose a fee for the registration of an applicant.

(f) Impose a fee to an applicant for placement services or job referral or employment consulting services except when the services rendered result in that applicant accepting employment and establishes a confirmed starting date.

(g) Engage or attempt to engage in splitting or sharing, with an employer, an agent or other employee of an employer, or other person to whom private personnel placement service has been furnished, a payment received by a private personnel placement service from a person seeking employment or from an employer.

(h) Procure or attempt to procure the discharge of a person from his current employment.

(i) Advertise in any media, including a newspaper, trade publication, billboard, radio, television, card, printed notice, circular, contract, letterhead, or any other material made for public distribution, except an envelope, without stating the firm name and if the firm name does not include words identifying it as providing private personnel placement service then additional words must be used such as Personnel Agency, Personnel Consultant, Fee Paid, or other wording that establishes the identity as a Private Personnel Placement Service in the advertisement.

(j) Deleted.

(k) Use or cause to be used any fictitious name as a contact person for an applicant or employer or a name which is not the correct name of the private personnel placement service itself or the individual employee within the service who is handling the job order.

SECTION 41-25-60. Advertisements in South Carolina of firms located outside its jurisdiction.

Any person who acts as a private personnel placement service doing business in South Carolina but is located outside the jurisdiction of the other provisions of this chapter may not be allowed to advertise by any media, including a newspaper, trade publication, billboard, radio, television, card, printed notice, circular, contract, letterhead, or any other material made for public distribution, except an envelope, without clearly stating that the advertisement is by a firm providing private personnel placement services, stating the firm name, address, and using the words personnel placement service, personnel agency, consultants, fee paid, or other wording that establishes the identity as a private personnel placement service in the advertisement, if the firm name does not include such words.

SECTION 41-25-70. Prohibited activities or conduct of employers or person seeking employment.

Any person or employer seeking employees or a person seeking employment shall not:

- (a) Make any false statement or conceal any material fact for the purpose of obtaining employees, or employment, by or through a private personnel placement service.
- (b) Engage or attempt to engage in the splitting or sharing of fees or payments for services of a private personnel placement service with any person to whom this chapter is applicable.
- (c) Intentionally or knowingly refuse to pay any fee due to a private personnel placement service for placement services rendered.

SECTION 41-25-80. Confidentiality of records and files.

Private personnel placement service information is confidential and must be considered and protected as follows:

All records and files of the private personnel placement service of all applicants, all customers, all job orders, which include their names, addresses, telephone

numbers, and all related data for each, is confidential and belongs to the firm regardless of the medium on which it is recorded. The improper use or removal from the firm of all or any part of this data by a current or former employee is prohibited without written authority from the owner of the private personnel placement service and its use by a former employee is prohibited for a period of one hundred eighty days from the date of that person's separation from the firm.

SECTION 41-25-90. Penalties.

Any person who knowingly violates Sections 41-25-30, 41-25-40, 41-25-50, 41-25-60, 41-25-70, or 41-25-80 is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or be imprisoned for not more than one year, or both. In addition, anyone convicted of the violations must be denied his right to operate as a private personnel placement service and shall immediately surrender his license to the Secretary.

Failure to surrender the license shall subject the licensee to a misdemeanor with the same penalty as above prescribed in this section with each day of noncompliance constituting a separate offense.

SECTION 41-25-100. Liability for violations; remedies.

(a) A person who knowingly violates Sections 41-25-50, 41-25-60, 41-25-70, and 41-25-80 is liable to the person adversely affected by the violation for three times the amount of actual damages incurred plus court costs and reasonable attorneys' fees.

(b) In an action filed under this section, a plaintiff may seek and the court, in its discretion, may grant:

(1) An order enjoining the defendant in the suit from violating Sections 41-25-50, 41-25-60, 41-25-70, and 41-25-80;

(2) Any order necessary to restore to the person any property acquired by the defendant in the suit in violation of Sections 41-25-50, 41-25-60, 41-25-70, and 41-25-80; or

(3) Other relief that the court considers proper, including, if the court's judgment against the defendant in the suit is not satisfied within three months after the date of the final judgment, the appointment of a receiver, the revocation of a license or certificate authorizing the defendant in the suit to engage in business in this State, or an order enjoining the defendant in the suit from acting as a personnel service.

SECTION 41-25-110. State agencies entitled to enforce chapter.

The provisions of this chapter may be enforced by any state agency having jurisdiction and authority to enforce this chapter, including, but not limited to:

(a) Secretary of State

(b) Division of Labor

(c) Attorney General

(d) Department of Consumer Affairs

(e) South Carolina Law Enforcement Division

(f) Circuit solicitors

(g) Local law enforcement agencies

(h) Any person who has been damaged by or has knowledge of any violation of the provisions of this chapter.