

By: Farabee

H.B. No. 2808

A BILL TO BE ENTITLED

AN ACT

relating to the licensing of health care staffing agencies;
providing penalties.

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

SECTION 1. Subtitle G, Title 2, Health and Safety Code, is amended by adding Chapter 148 to read as follows:

CHAPTER 148. HEALTH CARE STAFFING AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 148.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Health care facility" means a public or private hospital, skilled nursing facility, intermediate care facility, ambulatory surgical facility, family planning clinic that performs ambulatory surgical procedures, rural or urban health initiative clinic, kidney disease treatment facility, inpatient rehabilitation facility, the office of a physician or practitioner of the healing arts practicing individually or in a group, and any other facility designated a health care facility by federal law.

(4) "Health care staffing agency" means a person who places temporary health care personnel at a health care facility or any other business that provides health care services to the

1 public.

2 [Sections 148.002-148.050 reserved for expansion]

3 SUBCHAPTER B. LICENSING

4 Sec. 148.051. LICENSE REQUIRED. A person may not operate a
5 health care staffing agency unless the person holds a license
6 issued by the department.

7 Sec. 148.052. LICENSE APPLICATION. An applicant for a
8 license under this chapter must submit to the department:

9 (1) a written application on a form prescribed by the
10 department; and

11 (2) a license fee in an amount set by the department.

12 Sec. 148.053. ELIGIBILITY REQUIREMENTS. The executive
13 commissioner shall adopt rules regarding the eligibility of an
14 applicant for a license under this chapter. Rules adopted under
15 this section must require a license applicant to:

16 (1) maintain general and professional liability
17 insurance in an amount specified by the rules and workers'
18 compensation coverage for the applicant's employees; and

19 (2) be accredited by a nationally recognized
20 accrediting authority approved by the executive commissioner.

21 Sec. 148.054. LICENSE RENEWAL. (a) The executive
22 commissioner by rule may adopt a system under which licenses expire
23 on various dates during the year.

24 (b) At least 30 days before the expiration of a person's
25 license, the department shall send written notice of the impending
26 license expiration to the person at the person's last known address
27 according to the department's records.

1 (c) A person may renew the person's unexpired license by
2 paying the required renewal fee to the department before the
3 expiration date of the license.

4 (d) A person whose license has been expired for 90 days or
5 less may renew the license by paying to the department a fee equal
6 to 1-1/2 times the required renewal fee. If a license has been
7 expired for more than 90 days but less than one year, the person may
8 renew the license by paying to the department a fee equal to two
9 times the required renewal fee.

10 (e) If a person's license has been expired for one year or
11 longer, the person may not renew the license. The person may obtain
12 a new license by complying with the requirements and procedures for
13 obtaining an original license.

14 Sec. 148.055. DENIAL, SUSPENSION, OR REVOCATION OF LICENSE.
15 The department may deny a license application or suspend or revoke
16 the license of a person who fails to comply with the rules or
17 standards for licensing required by this chapter.

18 [Sections 148.056-148.100 reserved for expansion]

19 SUBCHAPTER C. PENALTIES AND ENFORCEMENT PROVISIONS

20 Sec. 148.101. CIVIL PENALTY; INJUNCTION. (a) If, after
21 actual notice has been given to a person and the person has been
22 given a reasonable time to correct the violation, it appears that a
23 person has continued to violate or is violating this chapter or an
24 order issued or a rule adopted under this chapter, the department
25 may ask the attorney general, the district or county attorney, or
26 the municipal attorney of a municipality in the jurisdiction in
27 which the violation is alleged to have occurred or may occur to

1 institute an action for:

2 (1) a permanent or temporary injunction, temporary
3 restraining order, or other appropriate remedy if the department
4 shows that the person has engaged in or is engaging in a violation;

5 (2) the assessment and recovery of a civil penalty; or

6 (3) both injunctive relief and a civil penalty.

7 (b) A civil penalty may be not more than \$5,000 a day for
8 each violation. Each day the violation occurs constitutes a
9 separate violation for the purposes of the assessment of a civil
10 penalty.

11 (c) Venue for a suit brought under this section is the
12 municipality or county in which the violation occurred or in Travis
13 County.

14 (d) A civil penalty recovered in an action instituted by a
15 local government under this section shall be paid to the local
16 government.

17 (e) The executive commissioner or the attorney general may
18 each recover reasonable expenses incurred in obtaining injunctive
19 relief or a civil penalty under this section, including
20 investigation and court costs, reasonable attorney's fees, witness
21 fees, and other expenses. The expenses recovered by the executive
22 commissioner under this section shall be used for the
23 administration and enforcement of this chapter. The expenses
24 recovered by the attorney general shall be used by the attorney
25 general.

26 Sec. 148.102. EMERGENCY ORDER. (a) The executive
27 commissioner or the executive commissioner's designee may issue an

1 emergency order relating to the operation of a health care staffing
2 agency in the department's jurisdiction if the executive
3 commissioner or the executive commissioner's designee determines
4 that:

5 (1) operation of the health care staffing agency
6 creates or poses an immediate and serious threat to human life or
7 health; and

8 (2) other procedures available to the department to
9 remedy or prevent the threat will result in unreasonable delay.

10 (b) The executive commissioner or the executive
11 commissioner's designee may issue an emergency order without notice
12 or a hearing if the executive commissioner or the designee
13 determines notice or a hearing is not practical under the
14 circumstances.

15 (c) If an emergency order is issued without a hearing, the
16 department shall determine a time and place for a hearing at which
17 the emergency order is affirmed, modified, or set aside. The
18 hearing shall be held under rules of the department.

19 [Sections 148.103-148.150 reserved for expansion]

20 SUBCHAPTER D. ADMINISTRATIVE PENALTY

21 Sec. 148.151. IMPOSITION OF ADMINISTRATIVE PENALTY. The
22 department may impose an administrative penalty on a person
23 licensed under this chapter who violates this chapter or a rule or
24 order adopted under this chapter.

25 Sec. 148.152. AMOUNT OF ADMINISTRATIVE PENALTY. (a) The
26 amount of the administrative penalty may be not more than \$5,000 for
27 each violation. Each day a violation continues or occurs is a

1 separate violation for the purpose of imposing a penalty.

2 (b) The amount shall be based on:

3 (1) the seriousness of the violation, including the
4 nature, circumstances, extent, and gravity of the violation;

5 (2) the economic harm caused by the violation;

6 (3) the history of previous violations;

7 (4) the amount necessary to deter a future violation;

8 (5) efforts to correct the violation; and

9 (6) any other matter that justice may require.

10 Sec. 148.153. REPORT AND NOTICE OF VIOLATION AND PENALTY.

11 (a) If the executive commissioner or the executive commissioner's
12 designee determines that a violation occurred, the executive
13 commissioner or the designee may issue to the department a report
14 stating:

15 (1) the facts on which the determination is based; and

16 (2) the executive commissioner's or the designee's
17 recommendation on the imposition of an administrative penalty,
18 including a recommendation on the amount of the penalty.

19 (b) Not later than the 14th day after the date the report is
20 issued, the executive commissioner or the executive commissioner's
21 designee shall give written notice of the report to the person. The
22 notice must:

23 (1) include a brief summary of the alleged violation;

24 (2) state the amount of the recommended administrative
25 penalty; and

26 (3) inform the person of the person's right to a
27 hearing on the occurrence of the violation, the amount of the

1 penalty, or both.

2 Sec. 148.154. PENALTY TO BE PAID OR HEARING REQUESTED. (a)
3 Not later than the 10th day after the date the person receives the
4 notice, the person in writing may:

5 (1) accept the determination and recommended
6 administrative penalty of the executive commissioner or the
7 executive commissioner's designee; or

8 (2) make a request for a hearing on the occurrence of
9 the violation, the amount of the penalty, or both.

10 (b) If the person accepts the determination and recommended
11 penalty of the executive commissioner or the executive
12 commissioner's designee, the department by order shall approve the
13 determination and impose the recommended penalty.

14 Sec. 148.155. HEARING. (a) If the person requests a
15 hearing or fails to respond in a timely manner to the notice, the
16 executive commissioner or the executive commissioner's designee
17 shall set a hearing and give written notice of the hearing to the
18 person.

19 (b) An administrative law judge of the State Office of
20 Administrative Hearings shall hold the hearing.

21 (c) The administrative law judge shall make findings of fact
22 and conclusions of law and promptly issue to the department a
23 proposal for a decision about the occurrence of the violation and
24 the amount of a proposed administrative penalty.

25 Sec. 148.156. DECISION BY DEPARTMENT. (a) Based on the
26 findings of fact, conclusions of law, and proposal for decision,
27 the department by order may determine that:

1 (1) a violation occurred and impose an administrative
2 penalty; or

3 (2) a violation did not occur.

4 (b) The notice of the department's order given to the person
5 must include a statement of the right of the person to judicial
6 review of the order.

7 Sec. 148.157. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

8 (a) Not later than the 30th day after the date the department's
9 order becomes final, the person shall:

10 (1) pay the administrative penalty; or

11 (2) file a petition for judicial review contesting the
12 occurrence of the violation, the amount of the penalty, or both.

13 (b) Within the 30-day period prescribed by Subsection (a), a
14 person who files a petition for judicial review may:

15 (1) stay enforcement of the penalty by:

16 (A) paying the penalty to the court for placement
17 in an escrow account; or

18 (B) giving the court a supersedeas bond approved
19 by the court that:

20 (i) is for the amount of the penalty; and

21 (ii) is effective until all judicial review
22 of the department's order is final; or

23 (2) request the court to stay enforcement of the
24 penalty by:

25 (A) filing with the court a sworn affidavit of
26 the person stating that the person is financially unable to pay the
27 penalty and is financially unable to give the supersedeas bond; and

1 (B) giving a copy of the affidavit to the
2 executive commissioner or the executive commissioner's designee by
3 certified mail.

4 (c) If the executive commissioner or the executive
5 commissioner's designee receives a copy of an affidavit under
6 Subsection (b)(2), the executive commissioner or the designee may
7 file with the court, not later than the fifth day after the date the
8 copy is received, a contest to the affidavit.

9 (d) The court shall hold a hearing on the facts alleged in
10 the affidavit as soon as practicable and shall stay the enforcement
11 of the penalty on finding that the alleged facts are true. The
12 person who files an affidavit has the burden of proving that the
13 person is financially unable to pay the penalty and to give a
14 supersedeas bond.

15 Sec. 148.158. COLLECTION OF PENALTY. (a) If the person
16 does not pay the administrative penalty and the enforcement of the
17 penalty is not stayed, the penalty may be collected.

18 (b) The attorney general may sue to collect the penalty.

19 Sec. 148.159. DETERMINATION BY COURT. (a) If the court
20 sustains the determination that a violation occurred, the court may
21 uphold or reduce the amount of the administrative penalty and order
22 the person to pay the full or reduced amount of the penalty.

23 (b) If the court does not sustain the finding that a
24 violation occurred, the court shall order that a penalty is not
25 owed.

26 Sec. 148.160. REMITTANCE OF PENALTY AND INTEREST. (a) If
27 the person paid the administrative penalty and if the amount of the

1 penalty is reduced or the penalty is not upheld by the court, the
2 court shall order, when the court's judgment becomes final, that
3 the appropriate amount plus accrued interest be remitted to the
4 person.

5 (b) The interest accrues at the rate charged on loans to
6 depository institutions by the New York Federal Reserve Bank.

7 (c) The interest shall be paid for the period beginning on
8 the date the penalty is paid and ending on the date the penalty is
9 remitted.

10 (d) If the person gave a supersedeas bond and the penalty is
11 not upheld by the court, the court shall order, when the court's
12 judgment becomes final, the release of the bond.

13 (e) If the person gave a supersedeas bond and the amount of
14 the penalty is reduced, the court shall order the release of the
15 bond after the person pays the reduced amount.

16 Sec. 148.161. ADMINISTRATIVE PROCEDURE. A proceeding under
17 this subchapter is a contested case under Chapter 2001, Government
18 Code.

19 SECTION 2. (a) Not later than September 1, 2008, a health
20 care staffing agency in operation on the effective date of this Act
21 must obtain a license as required by Chapter 148, Health and Safety
22 Code, as added by this Act.

23 (b) Not later than March 1, 2008, the executive commissioner
24 of the Health and Human Services Commission shall adopt rules as
25 required by Chapter 148, Health and Safety Code, as added by this
26 Act.

27 SECTION 3. This Act takes effect September 1, 2007, except

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1 that Subchapters C and D, Chapter 148, Health and Safety Code, as
2 added by this Act, take effect March 1, 2008.