

1-1 By: Williams S.B. No. 1365
1-2 (In the Senate - Filed March 7, 2007; March 20, 2007, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 23, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 23, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1365 By: Watson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of staff leasing services.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 91.001, Labor Code, is amended by adding
1-13 Subdivision (18) to read as follows:

1-14 (18) "Working capital" of an applicant means the
1-15 applicant's current assets minus the applicant's current
1-16 liabilities as determined by generally accepted accounting
1-17 principles.

1-18 SECTION 2. Section 91.014, Labor Code, is amended to read as
1-19 follows:

1-20 Sec. 91.014. WORKING CAPITAL [~~NET WORTH~~] REQUIREMENTS.

1-21 (a) An applicant for an original or renewal license must
1-22 demonstrate a positive working capital [~~net worth~~] as follows:

1-23 (1) \$50,000 if the applicant employs fewer than 250
1-24 assigned employees;

1-25 (2) \$75,000 if the applicant employs at least 250 but
1-26 not more than 750 assigned employees; and

1-27 (3) \$100,000 if the applicant employs more than 750
1-28 assigned employees.

1-29 (b) The applicant may demonstrate the applicant's working
1-30 capital [~~net worth~~] to the department by providing the department
1-31 with the applicant's financial statement [~~or a copy of the~~
1-32 ~~applicant's most recent federal tax return~~]. The applicant may
1-33 also satisfy any deficiencies in the working capital [~~the net~~
1-34 ~~worth~~] requirement through guarantees, letters of credit, a bond in
1-35 an amount that demonstrates compliance with the requirements of
1-36 Subsection (a), or other security acceptable to the department. A
1-37 guaranty is not acceptable to satisfy this subsection unless the
1-38 applicant submits sufficient evidence to satisfy the department
1-39 that the guarantor has adequate resources to satisfy the
1-40 obligations of the guaranty.

1-41 (c) In computing working capital [~~net worth~~], an applicant
1-42 shall include adequate reserves for all taxes and insurance,
1-43 including reserves for claims incurred but not paid and for claims
1-44 incurred but not reported under plans of self-insurance for health
1-45 benefits. [~~The computation of net worth by an applicant is to be~~
1-46 ~~made according to Section 448, Internal Revenue Code (26 U.S.C.~~
1-47 ~~Section 448)].~~

1-48 (d) A document submitted to establish working capital [~~net~~
1-49 ~~worth~~] must show the working capital [~~net worth~~] on a date not
1-50 earlier than nine months before the date on which the application is
1-51 submitted. A document submitted to establish working capital [~~net~~
1-52 ~~worth~~] must be prepared or certified by an independent certified
1-53 public accountant. After April 1, 2010, a document submitted to
1-54 establish working capital must be reviewed or audited by an
1-55 independent certified public accountant. Information submitted to
1-56 or maintained by the department is subject to Chapter 552,
1-57 Government Code, other than information related to:

1-58 (1) identification of client companies;

1-59 (2) working capital [~~net worth~~]; or

1-60 (3) financial statements [~~, or~~

1-61 [~~(4) federal tax returns~~].

1-62 SECTION 3. Section 91.015, Labor Code, is amended by adding
1-63 Subsection (g) to read as follows:

2-1 (g) The department by rule may provide for the acceptance of
2-2 an affidavit and related supporting information provided by a
2-3 bonded, independent, and qualified assurance organization that has
2-4 been approved by the department in lieu of the requirements of this
2-5 section and Sections 91.012, 91.013, and 91.014.

2-6 SECTION 4. Section 91.016, Labor Code, is amended by adding
2-7 Subsection (b-1) to read as follows:

2-8 (b-1) If a license holder submits a timely and sufficient
2-9 application for renewal of a license issued or renewed by the
2-10 department under this chapter, the license holder's existing staff
2-11 leasing services license does not expire until the application has
2-12 been finally determined by the department.

2-13 SECTION 5. Section 91.020, Labor Code, is amended to read as
2-14 follows:

2-15 Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. The
2-16 department may take disciplinary action against a license holder on
2-17 any of the following grounds:

2-18 (1) engaging in staff leasing services or offering to
2-19 engage in the provision of staff leasing services without a
2-20 license;

2-21 (2) transferring or attempting to transfer a license
2-22 issued under this chapter;

2-23 (3) violating this chapter or any order or rule issued
2-24 by the executive director or commission under this chapter;

2-25 (4) failing after the 31st day after the date on which
2-26 a felony conviction of a controlling person is final to notify the
2-27 department in writing of the conviction;

2-28 (5) failing to cooperate with an investigation,
2-29 examination, or audit of the license holder's records conducted by
2-30 the license holder's insurance company or the insurance company's
2-31 designee, as allowed by the insurance contract or as authorized by
2-32 law by the Texas Department of Insurance;

2-33 (6) failing after the 31st day after the effective
2-34 date of a change in ownership, principal business address, or the
2-35 address of accounts and records to notify the department and the
2-36 Texas Department of Insurance of the change;

2-37 (7) failing to correct any tax filings or payment
2-38 deficiencies within a reasonable time as determined by the
2-39 executive director;

2-40 (8) refusing, after reasonable notice, to meet
2-41 reasonable health and safety requirements within the license
2-42 holder's control and made known to the license holder by a federal
2-43 or state agency;

2-44 (9) being delinquent in the payment of the license
2-45 holder's insurance premiums other than those subject to a
2-46 legitimate dispute;

2-47 (10) being delinquent in the payment of any employee
2-48 benefit plan premiums or contributions other than those subject to
2-49 a legitimate dispute;

2-50 (11) knowingly making a material misrepresentation to
2-51 an insurance company or to the department or other governmental
2-52 agency;

2-53 (12) failing to maintain the working capital [~~net~~
2-54 ~~worth~~] requirements required under Section 91.014; or

2-55 (13) using staff leasing services to avert or avoid an
2-56 existing collective bargaining agreement.

2-57 SECTION 6. Subdivision (12), Section 91.001, Labor Code, is
2-58 repealed.

2-59 SECTION 7. The changes in law made by this Act apply to a
2-60 staff leasing services license issued or renewed under Chapter 91,
2-61 Labor Code, on or after the effective date of this Act. A license
2-62 issued or renewed before the effective date of this Act is governed
2-63 by the law in effect immediately before the effective date of this
2-64 Act, and the former law is continued in effect for that purpose.

2-65 SECTION 8. This Act takes effect September 1, 2007.

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