

BILL ANALYSIS

Senate Research Center
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H.B. 2249
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current Texas law does not allow for electronic filing through assurance organizations and contains ambiguous language regarding whether the staff leasing arrangement prevents a staff leasing client company from qualifying for tax credits.

H.B. 2249 amends Section 91.001 (Definitions), Labor Code, to establish definitions of working capital for the purposes of license applications of assurance organizations. The bill also establishes electronic filing guidelines. The bill requires the Texas Commission of Licensing and Regulation to adopt rules to implement the provisions of the bill.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 4 (Section 91.021, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 91.001, Labor Code, by adding Subdivisions (2-a) and (18), to define "assurance organization" and "working capital."

SECTION 2. Amends Section 91.014, Labor Code, as follows:

Sec. 91.014. New heading: WORKING CAPITAL REQUIREMENTS. (a) Requires an applicant for an original or renewal license to demonstrate positive working capital in certain amounts, rather than a certain net worth.

(b) Requires the applicant to demonstrate the applicant's working capital to the Texas Department of Licensing and Regulation (TDLR) by providing TDLR with the applicant's financial statement, rather than authorizes the applicant to demonstrate the applicant's net worth to TDLR by providing TDLR with the applicant's financial statement or a copy of the applicant's most recent federal tax return. Requires that the financial statement be prepared in accordance with generally accepted accounting principles, be audited by an independent certified public accountant, and be without qualification as to the going concern status of the applicant. Requires an applicant that has not had sufficient operating history to have audited financial statements based on at least 12 months of operations to meet the financial capacity requirements required by Subsection (a) and provide TDLR with financial statements that have been reviewed by a certified public accountant. Authorizes the applicant to satisfy any deficiencies in the working capital requirement through guarantees, letters of credit, a bond in an amount that demonstrates compliance with the amounts required under Subsection (a), rather than demonstrates compliance with requirements of Subsection (a), or other security acceptable to TDLR.

(c) Deletes existing text requiring an applicant, in computing net worth, to include adequate reserves for all taxes and insurance, including reserves for claims incurred but not paid and for claims incurred but not reported under plans of self-insurance for health benefits. Deletes existing text providing that the computation of net worth by an applicant is to be made according to Section 448, Internal Revenue Code (26 U.S.C. Section 448). Redesignates Subsection (d) as

Subsection (c). Deletes existing text requiring that a document submitted to establish net worth show the net worth on the date not earlier than nine months before the date on which the application is submitted and that a document submitted to establish net worth be prepared or certified by an independent certified public accountant. Provides that information submitted to or maintained by TDLR is subject to Chapter 552 (Open Records), Government Code, other than information related to working capital, rather than net worth.

SECTION 3. Amends Section 91.020, Labor Code, to authorize TDLR to take disciplinary action against a license holder failing to maintain the working capital, rather than net worth requirements, required under Section 91.014.

SECTION 4. Amends Subchapter B, Chapter 91, Labor Code, by adding Section 91.021, as follows:

Sec. 91.021. ELECTRONIC FILING AND COMPLIANCE. (a) Authorizes the Texas Commission of Licensing and Regulation (TCLR) to adopt rules to permit the acceptance of electronic filings under this chapter, including the filing of applications, documents, reports, and other documents required by this chapter. Authorizes the rules to provide for the acceptance of electronic filing and other assurance by an assurance organization, qualified and approved by TCLR, that provides satisfactory assurance and documentation of compliance acceptable to TDLR that meets or exceeds the requirements of this chapter.

(b) Authorizes a staff leasing services company to authorize an assurance organization that is qualified and approved by TCLR to act on its behalf in complying with the licensing requirements of this chapter, including the electronic filing of information and the payment of application and licensing fees. Provides that use of an assurance organization is optional and is not mandatory for a staff leasing services company.

(c) Provides that nothing in this section may be construed to change or affect TDLR's authority to issue licenses, revoke licenses, conduct investigations, or enforce any provision of this chapter.

SECTION 5. Amends Subchapter D, Chapter 91, Labor Code, by adding Section 91.050, as follows:

Sec. 91.050. TAX CREDITS AND OTHER INCENTIVES. (a) Provides that for the purpose of determining tax credits, grants, and other economic incentives provided by this state or other governmental entities that are based on employment, assigned employees are considered employees of the client and the client is solely entitled to the benefit of any tax credit, economic incentive, or other benefit arising from the employment of assigned employees of the client. Provides that this subsection applies even if the staff leasing services company is the reporting employer for federal income tax purposes.

(b) Requires each client to be treated as employing only those assigned employees co-employed by the client, if a grant or the amount of any incentive described by Subsection (a) is based on the number of employees. Provides that assigned employees working for other clients of the staff leasing services company may not be included in the computation.

(c) Requires each staff leasing services company to provide, on request of a client or an agency of this state, employment information reasonably required by the state agency responsible for the administration of any tax credit or economic incentive described by Subsection (a) and necessary to support a request, claim, application, or other action by a client seeking the tax credit or economic incentive.

SECTION 6. Repealer: Section 91.001(12) (relating to the definition of "net worth"), Labor Code.

SECTION 7. Provides that the changes in law made by this Act regarding the qualifications for or the issuance or renewal of a license apply to a staff leasing services license issued or renewed under Chapter 91, Labor Code, on or after December 31, 2010. Provides that a license issued or renewed before December 31, 2010, is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

SECTION 8. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Section 91.014, Labor Code, as amended by this Act: December 31, 2011.