

By: Williams

S.B. No. 1427

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of staff leasing services.

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

SECTION 1. Section 91.001, Labor Code, is amended by adding Subdivisions (2-a) and (18) to read as follows:

(2-a) "Assurance organization" means an independent entity approved by the commission that:

(A) provides a national program of accreditation and financial assurance for staff leasing services companies;

(B) has documented qualifications, standards, and procedures acceptable to the department; and

(C) agrees to provide information, compliance monitoring services, and financial assurance useful to the department in accomplishing the provisions of this chapter.

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

SECTION 2. Section 91.014, Labor Code, is amended to read as follows:

Sec. 91.014. WORKING CAPITAL [~~NET WORTH~~] REQUIREMENTS. (a) An applicant for an original or renewal license must demonstrate positive working capital in the following amounts [~~a net worth as follows~~]:

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

3 (2) \$75,000 if the applicant employs at least 250 but
4 not more than 750 assigned employees; and

5 (3) \$100,000 if the applicant employs more than 750
6 assigned employees.

7 (b) The applicant shall [~~may~~] demonstrate the applicant's
8 working capital [~~net worth~~] to the department by providing the
9 department with the applicant's financial statement [~~or a copy of~~
10 ~~the applicant's most recent federal tax return~~]. The financial
11 statement must be prepared in accordance with generally accepted
12 accounting principles, be audited by an independent certified
13 public accountant, and be without qualification as to the going
14 concern status of the applicant. An applicant that has not had
15 sufficient operating history to have audited financial statements
16 based on at least 12 months of operations must meet the financial
17 capacity requirements required by Subsection (a) and provide the
18 department with financial statements that have been reviewed by a
19 certified public accountant. The applicant may also satisfy any
20 deficiencies in the working capital [~~the net worth~~] requirement
21 through guarantees, letters of credit, a bond in an amount that
22 demonstrates compliance with the amounts required under
23 [~~requirements of~~] Subsection (a), or other security acceptable to
24 the department. A guaranty is not acceptable to satisfy this
25 subsection unless the applicant submits sufficient evidence to
26 satisfy the department that the guarantor has adequate resources to
27 satisfy the obligations of the guaranty.

1 (c) ~~[In computing net worth, an applicant shall include~~
2 ~~adequate reserves for all taxes and insurance, including reserves~~
3 ~~for claims incurred but not paid and for claims incurred but not~~
4 ~~reported under plans of self-insurance for health benefits. The~~
5 ~~computation of net worth by an applicant is to be made according to~~
6 ~~Section 448, Internal Revenue Code (26 U.S.C. Section 448).~~

7 ~~[(d) A document submitted to establish net worth must show~~
8 ~~the net worth on a date not earlier than nine months before the date~~
9 ~~on which the application is submitted. A document submitted to~~
10 ~~establish net worth must be prepared or certified by an independent~~
11 ~~certified public accountant.]~~ Information submitted to or
12 maintained by the department is subject to Chapter 552, Government
13 Code, other than information related to:

- 14 (1) identification of client companies;
- 15 (2) working capital ~~[net worth]~~;
- 16 (3) financial statements; or
- 17 (4) federal tax returns.

18 SECTION 3. Section 91.020, Labor Code, is amended to read as
19 follows:

20 Sec. 91.020. GROUNDS FOR DISCIPLINARY ACTION. The
21 department may take disciplinary action against a license holder on
22 any of the following grounds:

23 (1) engaging in staff leasing services or offering to
24 engage in the provision of staff leasing services without a
25 license;

26 (2) transferring or attempting to transfer a license
27 issued under this chapter;

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

3 (4) failing after the 31st day after the date on which
4 a felony conviction of a controlling person is final to notify the
5 department in writing of the conviction;

6 (5) failing to cooperate with an investigation,
7 examination, or audit of the license holder's records conducted by
8 the license holder's insurance company or the insurance company's
9 designee, as allowed by the insurance contract or as authorized by
10 law by the Texas Department of Insurance;

11 (6) failing after the 31st day after the effective
12 date of a change in ownership, principal business address, or the
13 address of accounts and records to notify the department and the
14 Texas Department of Insurance of the change;

15 (7) failing to correct any tax filings or payment
16 deficiencies within a reasonable time as determined by the
17 executive director;

18 (8) refusing, after reasonable notice, to meet
19 reasonable health and safety requirements within the license
20 holder's control and made known to the license holder by a federal
21 or state agency;

22 (9) being delinquent in the payment of the license
23 holder's insurance premiums other than those subject to a
24 legitimate dispute;

25 (10) being delinquent in the payment of any employee
26 benefit plan premiums or contributions other than those subject to
27 a legitimate dispute;

1 (11) knowingly making a material misrepresentation to
2 an insurance company or to the department or other governmental
3 agency;

4 (12) failing to maintain the working capital [~~net~~
5 ~~worth requirements~~] required under Section 91.014; or

6 (13) using staff leasing services to avert or avoid an
7 existing collective bargaining agreement.

8 SECTION 4. Subchapter B, Chapter 91, Labor Code, is amended
9 by adding Section 91.021 to read as follows:

10 Sec. 91.021. ELECTRONIC FILING AND COMPLIANCE. (a) The
11 commission may adopt rules to permit the acceptance of electronic
12 filings under this chapter, including the filing of applications,
13 documents, reports, and other documents required by this chapter.
14 The rules may provide for the acceptance of electronic filing and
15 other assurance by an assurance organization, qualified and
16 approved by the commission, that provides satisfactory assurance
17 and documentation of compliance acceptable to the department that
18 meets or exceeds the requirements of this chapter.

19 (b) A staff leasing services company may authorize an
20 assurance organization that is qualified and approved by the
21 commission to act on its behalf in complying with the licensing
22 requirements of this chapter, including the electronic filing of
23 information and the payment of application and licensing fees. Use
24 of an assurance organization is optional and is not mandatory for a
25 staff leasing services company.

26 (c) Nothing in this section may be construed to change or
27 affect the department's authority to issue licenses, revoke

1 licenses, conduct investigations, or enforce any provision of this
2 chapter.

3 SECTION 5. Subchapter D, Chapter 91, Labor Code, is amended
4 by adding Section 91.050 to read as follows:

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

14 (b) If a grant or the amount of any incentive described by
15 Subsection (a) is based on the number of employees, each client
16 shall be treated as employing only those assigned employees
17 co-employed by the client. Assigned employees working for other
18 clients of the staff leasing services company may not be included in
19 the computation.

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

27 SECTION 6. Section 91.001(12), Labor Code, is repealed.

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

8 SECTION 8. (a) Except as provided by Subsection (b) of this
9 section, this Act takes effect September 1, 2009.

10 (b) Section 91.014, Labor Code, as amended by this Act,
11 takes effect December 31, 2010.