

CHAPTER 994

H.B. No. 456

AN ACT

relating to the regulation of certain staff leasing services; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. DEFINITIONS. In this Act:

- (1) "Applicant" means a business seeking to be licensed under this Act or seeking the renewal of a license under this Act.
- (2) "Client company" means a person that contracts with a licensee and is assigned employees by the licensee under that contract.
- (3) "Commission" means the Texas Commission of Licensing and Regulation.
- (4) "Commissioner" means the commissioner of licensing and regulation.
- (5) "Controlling person" means:
 - (A) an officer or director of a corporation seeking to offer staff leasing services, a shareholder holding 10 percent or more of the voting stock of a corporation seeking to offer staff leasing services, or a partner of a partnership seeking to offer staff leasing services; or

(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 staff leasing services through the ownership of voting securities, by contract or otherwise.

(6) "Department" means the Texas Department of Licensing and Regulation.

(7) "Independent contractor" means a person who contracts to perform work or provide a service for the benefit of another and who:

(A) is paid by the job, not by the hour or some other time-measured basis;

(B) is free to hire as many helpers as the person desires and to determine what each helper will be paid; and

(C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employer.

(8) "Licensee" means a person licensed under this Act to provide staff leasing services.

(9) "Person" means an individual, association, corporation, organization, government or governmental subdivision or agency, business trust, estate trust, joint venture, partnership, or other legal entity.

(10) "Public company" means a corporation whose shares are listed on the New York Stock Exchange and that has total assets that exceed \$1 billion.

(11) "Staff leasing services" means an arrangement by which employees of a licensee are assigned to work at a client company and in which employment responsibilities are in fact 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 workforce at a client company worksite or a specialized group within that workforce consists of assigned employees of the licensee. The term does not include:

(A) a temporary help service;

(B) an independent contractor;

(C) a public company or any other person in which that public company has a direct or indirect ownership interest in excess of 33 1/3 percent, including ownership through subsidiaries and affiliates; or

(D) a temporary common worker agency or employer as defined in Volume 15, Article 5221a-10, Vernon's Texas Civil Statutes.

(12) "Staff leasing services company" means an individual business entity that offers staff leasing services.

(13) "Temporary employee" means an employee hired for a temporary help service.

(14) "Temporary help service" means an arrangement by which an organization hires its own employees and assigns them to clients to support or supplement the client's workforce in special work situations such as employee absences, temporary skill shortages, seasonal workloads, or special assignments and projects.

SECTION 2. RULES; INTERAGENCY COOPERATION. (a) The commissioner shall adopt rules as necessary to administer this Act.

(b) Rules shall be adopted in compliance with the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(c) Each licensee is governed and controlled by this Act and the rules adopted by the commissioner.

(d) Notwithstanding any other provision of this Act, nothing in this Act preempts the existing statutory or rulemaking authority of any other state agency or entity to regulate staff leasing services in a manner that is consistent with the statutory authority of that state agency or entity.

(e) Each state agency that, in performing duties under other law, affects the regulation of staff leasing services shall cooperate with the department, the commissioner, and other state agencies as necessary to fully implement and enforce this Act. In particular, the Texas Employment Commission, the Texas Department of Insurance, the Texas Workers' Compensation Commission, and the attorney general's office shall assist in the implementation of this Act and shall provide information to the department on request.

SECTION 3. LICENSE REQUIRED; APPLICATION. (a) A person may not engage in or offer staff leasing services in this state without holding a license issued under this Act.

(b) Each person that desires an original or renewal staff leasing services company license shall file with the department a written application accompanied by the application fee.

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

(d) An applicant or licensee is ineligible for a license for two years after the date of final department action on the denial or revocation of a license applied for or issued under this Act. 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; or

(3) the department was unable to complete the criminal background investigation required under Section 4 of this Act because of insufficient information received from a local, state, or federal law enforcement agency.

(e) An applicant or licensee is ineligible for a license for one year after the date of final department action on the denial or revocation of a license applied for or issued under this Act if:

(1) the basis of the denial or revocation was that one or more of the controlling persons affiliated with the applicant or licensee was determined by the department to be unsuitable; or

(2) that unsuitable controlling person has in fact ceased to be a controlling person of the applicant or licensee.

SECTION 4. LICENSE REQUIREMENTS. (a) To be qualified to serve as a controlling person of a licensee under this Act, that person must be at least 18 years of age, be of good moral character, and have educational, managerial, or business experience relevant to:

(1) operation of a business entity offering staff leasing services; or

(2) service as a controlling person of a staff leasing services company.

(b) For the purposes of this section, "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.

(c) The department shall conduct a thorough background investigation of each individual applicant and of each controlling person of each applicant to determine whether that applicant or controlling person is qualified under this Act. 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 Act. The investigation must include:

(1) the submission of fingerprints for processing through appropriate local, state, and federal law enforcement agencies; and

(2) examination by the department of police or other law enforcement records maintained by local, state, or federal law enforcement agencies.

(d) Department background investigations are governed by this Act and by Article 6252-13c, Revised Statutes, and Sections 2-5, Acts of the 67th Legislature, Regular Session, 1981 (Article 6252-13d, Vernon's Texas Civil Statutes). 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. The department shall consider criminal convictions as provided by Article 6252-13c, Revised Statutes, and Sections 2-5, Acts of the 67th Legislature, Regular Session, 1981 (Article 6252-13d, Vernon's Texas Civil Statutes).

(e) Each licensee shall maintain a registered agent for the service of process in this state.

(f) An applicant for an original or renewal license must demonstrate a net worth as follows:

- (1) \$50,000 if the applicant employs fewer than 250 assigned employees;
- (2) \$75,000 if the applicant employs at least 250 but not more than 750 assigned employees;
- (3) \$100,000 if the applicant employs more than 750 assigned employees.

(g) For purposes of Subsection (f) of this section, "assigned employee" means a full-time employee whose normal work week is at least 25 hours per week and whose work is performed in this state. The term does not include an employee hired to support or supplement the client's workforce in special work situations, such as employee absences, temporary skill shortages, seasonal workloads, or special assignments and projects.

(h) The applicant shall demonstrate the net worth to the department by providing the department with the applicant's financial statement or a copy of the applicant's most recent federal tax return. The net worth requirement may also be satisfied through guarantees, letters of credit, or other security acceptable to the department. 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.

(i) In calculating net worth, an applicant shall 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. The calculation of net worth by an applicant shall be made according to Section 448, Internal Revenue Code (26 U.S.C. Section 448).

(j) 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. A document submitted to establish net worth must be prepared or certified by an independent certified public accountant. Information supplied regarding net worth, including copies of federal tax returns, is proprietary and confidential and is exempt from disclosure to third parties, other than to other governmental agencies with a reasonable legitimate purpose for obtaining the information.

SECTION 5. FEES. (a) Each applicant for an original or renewal license shall pay to the department on the issuance of the license or license renewal a fee set by the commission by rule, in an amount not to exceed \$3,000 for a staff leasing services company license.

(b) The commission is authorized to charge reasonable fees for license applications and renewals, investigations, inspections, and any other administrative or enforcement responsibilities created under this Act.

SECTION 6. STAFF LEASING SERVICES AGREEMENT. A licensee shall establish the terms of a staff leasing 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 worksite.

SECTION 7. CONTRACT REQUIREMENTS. (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's worksites;
- (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; and
- (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.

(b) A licensee is responsible for its contractual duties and responsibilities to manage, maintain, collect, and make timely payments for:

- (1) insurance premiums;

- (2) benefit and welfare plans;
- (3) other employee withholding; and
- (4) any other expressed responsibility within the scope of the contract for fulfilling the duties imposed under this section.

(c) A licensee shall:

(1) comply with all appropriate state and federal laws relating to reporting, sponsoring, filing, and maintaining benefit and welfare plans;

(2) maintain adequate books and records regarding its duties and responsibilities;

(3) maintain and make available at all times to the commissioner the following information, which shall be treated as proprietary and confidential and is exempt from disclosure to third parties, except other governmental agencies with a reasonable and legitimate purpose for obtaining the information:

(A) the correct name, address, and telephone number of each client company;

(B) each client company contract; and

(C) a listing by classification code as described in the "Standard Industrial Classification Manual," published by the United States Office of Management and Budget, of each client company;

(4) notify the department of any addition or deletion of a controlling person as listed on the license application or renewal form by providing the name of the person not later than the 30th day after the date on which the person is added or deleted as a controlling person; and

(5) provide a notarized biographical history to the department in connection with the addition of a new controlling person.

SECTION 8. LIMITED LICENSE. (a) The commissioner by rule shall provide for the issuance of a limited license for a person that offers staff leasing services in this state on a limited basis and that is primarily engaged in offering staff leasing services in another state. The principal place of business of a person offering staff leasing services that applies for a license under this section must be located in a state other than this state.

(b) For the purposes of this section, a person offers staff leasing services on a limited basis if the person employs fewer than 20 assigned employees.

(c) A person offering staff leasing services on a limited basis must comply with all provisions of this Act with respect to those services performed within this state.

SECTION 9. ISSUANCE AND TERM OF LICENSES. (a) The department shall issue a license to an applicant determined to meet the requirements of this Act. The department shall issue the license not later than the 90th day after the date on which the completed application is filed with the department.

(b) A license issued by the department under this Act is valid for one year. The department shall renew a license on receipt of a renewal application approved by the department and payment of the required renewal fees.

SECTION 10. EMPLOYEE BENEFIT PLANS; REQUIRED DISCLOSURE. (a) A licensee may sponsor and maintain employee benefit plans for the benefit of assigned employees. A client company may include assigned employees in any benefit plan sponsored by the client company.

(b) Each 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. The information must 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; and

(5) whether the coverage is fully insured, partially insured, or fully self-funded.

(c) The commissioner by rule may require the filing by licensees of other reports that are reasonably necessary to the implementation of this Act.

SECTION 11. WORKERS' COMPENSATION INSURANCE. (a) A licensee may elect to obtain workers' compensation insurance coverage for its assigned employees through an insurance company as defined under Section 1.03, Texas Workers' Compensation Act (Article 8308-1.03, Vernon's Texas Civil Statutes), or through self-insurance as provided under Chapter D, Article 3, Texas Workers' Compensation Act (Article 8308-3.51 et seq., Vernon's Texas Civil Statutes).

(b) If a licensee maintains workers' compensation insurance, it shall pay workers' compensation insurance premiums based on the experience rating of the client company for the first two years the client company has a contract with the licensee and as further provided by rule by the Texas Department of Insurance.

(c) For workers' compensation insurance purposes, a licensee and its client company shall be co-employers. If a licensee elects to obtain workers' compensation insurance, the client company and the licensee are subject to Sections 3.08 and 4.01, Texas Workers' Compensation Act (Articles 8308-3.08 and 8308-4.01, Vernon's Texas Civil Statutes).

(d) If a licensee does not elect to obtain workers' compensation insurance, both the licensee and the client company are subject to Sections 3.03, 3.04, and 3.22, Texas Workers' Compensation Act (Articles 8308-3.03, 8308-3.04, and 8308-3.22, Vernon's Texas Civil Statutes).

(e) After the expiration of the two-year period under Subsection (b) of this section, if the client company either obtains a new workers' compensation insurance policy in its own name or adds its former assigned workers to an existing policy, the premium for the workers' compensation insurance policy of the client company shall be based on the lower of:

- (1) the experience modifier of the client company before entering into the staff leasing arrangement; or
- (2) the experience modifier of the licensee at the time the staff leasing arrangement terminated.

(f) On request, the Texas Department of Insurance shall provide the necessary calculations to the prospective workers' compensation insurer of the client company in order to comply with Subsection (e) of this section.

SECTION 12. HEALTH BENEFIT PLANS. (a) A licensee may not sponsor a plan of self-insurance for health benefits except as permitted by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(b) For purposes of this section, a "plan of self-insurance" includes any arrangement except an arrangement under which an insurance carrier authorized to do business in this state has issued an insurance policy that covers all of the obligations of the health benefits plan.

(c) A licensee that has a plan of self-insurance for health benefits for its leased employees in effect as of March 1, 1993, has until March 1, 1994, to bring its plan into compliance with the requirement of this section. This subsection expires March 31, 1994.

SECTION 13. UNEMPLOYMENT TAXES; PAYROLL. (a) A licensee is the employer of an assigned employee for purposes of the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes) and Article 5155, Revised Statutes. In addition to any other reports required to be filed by law, a licensee shall report quarterly to the Texas Employment Commission the name, address, telephone number, federal income tax identification number, and classification code as described in the "Standard Industrial Classification Manual" as published by the United States Office of Management and Budget of each client company on a form prescribed by the Texas Employment Commission.

(b) On contracting with a client company, a licensee shall notify the Texas Employment Commission of the contract. The notification shall be made in the form prescribed by the Texas Employment Commission.

(c) For purposes of the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes), in the event of the termination of a contract between a licensee and a client company or the failure by a staff leasing entity to submit reports or make tax payments as required by that Act, the contracting client company shall be treated

as a new employer without a previous experience record unless that client company is otherwise eligible for an experience rating.

SECTION 14. POSTING OF LICENSES. (a) The commissioner by rule shall determine the form and content of:

- (1) the licenses issued under this Act; and
- (2) notices required to be posted under this section.

(b) Each license issued under this Act must be posted in a conspicuous place in the principal place of business in this state of the licensee. Each 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 15. LICENSE NOT ASSIGNABLE; CHANGES OF NAME OR LOCATION. (a) A licensee may not conduct business under any name other than that specified in the license. A license issued under this Act 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 commission by rule shall set the fee for a name change in an amount not to exceed \$50. 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) any 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 16. PROHIBITED ACTS; CRIMINAL PENALTY. (a) A person may not:

(1) engage in staff leasing services without holding a license under this Act as a staff leasing services company;

(2) use the name or title "staff leasing company," "employee leasing company," "licensed staff leasing company," or "staff leasing services company," or otherwise represent that it is licensed under this Act, unless the entity holds a license issued under this Act;

(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 materially false or forged evidence to the department in connection with obtaining or renewing a license or in connection with disciplinary proceedings under this Act; or

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

(b) A person that violates Subsection (a) of this section commits an offense. An offense under this subsection is a Class A misdemeanor.

(c) The commissioner may notify the attorney general of a violation, and the attorney general may apply to a district court in Travis County for permission to file suit in the nature of quo warranto or for injunctive relief, or both. The attorney general may not be required to post a bond for injunctive relief.

SECTION 17. DISCIPLINARY ACTIONS. (a) For purposes of this section, "conviction" includes a plea of nolo contendere or a finding of guilt, regardless of adjudication.

(b) Disciplinary action may be taken against a licensee by the department on any of the following grounds:

- (1) the conviction of a licensee or any 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 any controlling person of a licensee of a crime that relates to the operation of a staff leasing service or the ability of the licensee or any controlling person of a licensee to operate a staff leasing service;

(3) the conviction of a licensee or any controlling person of a licensee of a crime that relates to the classification, misclassification, or under-reporting of employees under the Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes);

(4) the conviction of a licensee or any 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 any controlling person of a licensee of a crime that relates to fraud, deceit, or misconduct in the operation of a staff leasing service;

(6) engaging in staff leasing services without a license;

(7) transferring or attempting to transfer a license issued under this Act;

(8) violating this Act or any order or rule issued by the department or commissioner under this Act;

(9) failing to notify the department, in writing, of the felony conviction of any controlling person not later than the 30th day after the date on which that conviction is final;

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

(11) failing to notify the department and the Texas Department of Insurance not later than the 30th day after the effective date of the change of any change in ownership, principal business address, or the address of accounts and records;

(12) failing to correct any tax filings or payment deficiencies within a reasonable time as determined by the commissioner;

(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) a delinquency in the payment of the licensee's insurance premiums other than those subject to a legitimate dispute;

(15) a delinquency in the payment of any employee benefit plan premiums or contributions other than those subject to a legitimate dispute;

(16) knowingly making a material misrepresentation to an insurance company, or to the department or other governmental agency;

(17) failing to maintain the net worth requirements required under Section 4 of this Act; or

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

(c) On a finding that a licensee has violated one or more provisions of Subsection (b) of this section, the department may:

(1) deny an application for a license;

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

(3) impose an administrative penalty in an amount not less than \$1,000 per violation, but not more than \$50,000;

(4) issue a reprimand; or

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

(d) On revocation of a license, the licensee shall immediately return the revoked license to the department.

(e) Disciplinary action may be taken, a denial of an application for a new or renewal license or a revocation of a license may be done, or a determination that a controlling person is

unqualified may be made by the department only subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), with notice to, and an opportunity for a hearing by, the affected applicant, licensee, or controlling person.

(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.

SECTION 18. FEES USED FOR ADMINISTRATION. All fees collected by the department under this Act shall be used to implement this Act.

SECTION 19. EFFECT OF OTHER LAW. This Act does not exempt a client of a licensee, or any 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 considered to be an employee of the client company for the purpose of that license, registration, or certification.

SECTION 20. EFFECTIVE DATE; TRANSITION. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 1993.

(b) A person is not required to hold a license under this Act to provide staff leasing services until March 1, 1994.

(c) A person who applies for a license on or before March 1, 1994, and whose application is granted, is not liable for any act, omission, or representation that would be lawful under its license had the license been in effect at the time of the act, omission, or representation.

SECTION 21. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 4, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 456 on May 27, 1993, by a non-record vote; passed by the Senate, with amendments, on May 25, 1993: Yeas 30, Nays 0.

Approved June 19, 1993.

Effective Sept. 1, 1993.