

BILL ANALYSIS

Senate Research Center

S.B. 785
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Economic Development
3-13-97
As Filed

DIGEST

Currently, the Texas Department of Licensing and Regulation is authorized to grant a license to the controlling person of an employee leasing company for one year, provided the person passes an extensive background check. These annual background checks are cumbersome and expensive. In addition, the current licensing act does not make clear the contractual relationship between the employee leasing company and the worksite employer, and that the employee leasing company is not responsible for the product or service of the worksite employer, or the direction of the employee necessary to provide the product or service of the worksite employer. The relationship between the employee leasing company and the worksite employer needs further clarification for purposes of employee benefits, including workers' compensation benefits. This bill will provide new regulations for certain leasing services.

PURPOSE

As proposed, S.B. 785 provide new regulations for certain leasing services.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Department of Licensing and Regulation in SECTIONS 6 and 9 (Sections 91.019(a) and 91.041(c), Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 91.001, Labor Code, to define "common ownership" and "self-insurance," and redefines "controlling person," "net worth," and "staff leasing services."

SECTION 2. Amends Section 91.013(a), Labor Code, to require the Texas Department of Licensing and Regulation (department) to conduct a thorough background investigation, on receipt of an original application for a license for leasing staff services, of each individual applicant and of each controlling person of each applicant. Makes a conforming change.

SECTION 3. Amends Section 91.014(d), Labor Code, to provide that information or records submitted to a governmental body regarding or containing certain information are proprietary and confidential records. Provides that all disclosures of information submitted to a governmental body pursuant to this chapter are governed by Chapter 552, Government Code, including disclosures to a governmental body. Deletes existing text regarding confidentiality. Creates Subsection (e) from existing text. Makes nonsubstantive changes.

SECTION 4. Amends Section 91.015, Labor Code, by amending Subsections (c) and (d) and adding Subsections (e) and (f), to set forth the procedures for granting, denying, renewing, or revoking a license. Deletes existing text regarding ineligibility for a license.

SECTION 5. Amends Section 91.016, Labor Code, to require the department to issue a license to any applicant who meets the requirements of this chapter. Requires the department to issue or renew the license not later than the 60th, rather than 90th, day after the date on which substantially complete application forms are filed with the department. Requires the department to promptly notify an applicant of any deficiencies in its application. Requires an applicant or license holder who has submitted a new or renewal application to the department to be treated as a license holder for the

purposes of this chapter until the department acts on the application. Provides that a license issued by the department under this chapter is valid for two years, rather than one year. Requires the department to renew a license on receipt of a completed renewal application form and the payment of a license renewal fee. Sets forth procedures for renewing a license. Authorizes the department to exchange information concerning applicants, license holders, or controlling persons with staff leasing licensing authorities in other states for the purpose of reciprocal licensing. Prohibits issuance of a license on a reciprocal basis from requiring background investigations of persons or entities previously evaluated for licensing in another state.

SECTION 6. Amends Section 91.019, Labor Code, to require the department to provide, by rule, for the issuance of a limited license for certain persons. Provides that a person offers limited staff leasing services if the person employs fewer than 30, rather than 20, assigned employees at any time within this state. Sets forth regulations for a limited license. Requires a person holding or applying for a limited license, except as otherwise provided in this section, to comply with all provisions of this chapter with respect to services performed within this state. Makes nonsubstantive changes.

SECTION 7. Amends Section 91.021, Labor Code, by amending Subsections (a) and (d) and adding Subsections (e) and (f), to authorize the department, on a finding that an applicant or a license holder has violated one or more provisions of Section 91.020(a), to impose an administrative penalty in an amount not less than \$500, rather than \$1,000 for each violation. Authorizes an affected license holder, if a license is revoked or renewal is denied, to request a reinstatement hearing at any time. Requires the license holder to bear the burden of proof to establish that the cause for the revocation or denial of the license has been corrected. Requires the department to take into consideration the extent to which the causes of the revocation or nonrenewal have been corrected. Sets forth procedures for taking disciplinary action against an applicant, license holder, or controlling person.

SECTION 8. Amends Section 91.032, Labor Code, to set forth requirements for a contract between a license holder and a client company. Deletes existing text regarding payments by the client. Provides that, notwithstanding any other provision of this chapter, a client company is responsible for the exercise and direction and control over the assigned employees as is necessary to conduct the business of the client and without which the client would be unable to conduct its business, discharge any fiduciary responsibility that it may have, or comply with any licensure, regulatory, or statutory requirements applicable to the client. Provides that a client company is responsible for the exercise of direction and control over the details of the daily work performed by the assigned employees. Provides that a client company is solely responsible for the goods and services produced by the client and the acts or omissions of the assigned employees.

SECTION 9. Amends Sections 91.041(b) and (c), Labor Code, to require a license holder, with respect to any insurance provided by a license holder for the benefit of its assigned employees, to disclose certain information to the department, to each client company, and to its assigned employees. Authorizes the department, by rule, to require a license holder to file other reports that are necessary for the implementation of this chapter.

SECTION 10. Amends Sections 91.042(b)-(e), Labor Code, to require a license holder, if the license holder maintains a policy of workers' compensation insurance provided by the Texas Workers' Compensation Insurance Fund, to pay workers' compensation insurance premiums based on a certain formula. Deletes a provision requiring a license holder and the license holder's client company to be coemployers for workers' compensation insurance purposes. Provides that the client company is afforded the same protection of exclusive remedy as the license holder. Provides that if a license holder does not elect to obtain workers' compensation insurance, both the license holder and the client company are subject to Sections 406.004 and 406.033, except when a client company elects to obtain a workers' compensation policy on its own employees not assigned by the license holder. Requires any policy of workers' compensation issued to the client company for its own employees to cover only those unassigned employees and to not be extended to those employees assigned to the client company by the license holder. Makes a conforming change.

SECTION 11. Amends Section 91.043(a), Labor Code, to authorize, rather than prohibit, an applicant or a license holder to sponsor a plan of self-insurance for health benefits except as permitted by the Employee Retirement Income Security Act of 1974.

SECTION 12. Amends Section 91.044(a), Labor Code, to make a conforming change.

SECTION 13. Amends Section 91.048, Labor Code, to require each license holder to provide a notarized biographical history to the department in connection with the proposed addition of a new controlling person.

SECTION 14. Requires any staff leasing services license issued prior to the effective date of this Act to expire two years from the original issue date. Requires the department to issue replacement licenses with the correct expiration date.

SECTION 15. Effective date: September 1, 1997.

SECTION 16. Emergency clause.