

CHAPTER 371

LABOR AND INDUSTRY

SENATE BILL 22-210

BY SENATOR(S) Zenzinger and Cooke, Ginal, Pettersen, Smallwood;
also REPRESENTATIVE(S) Lontine and Soper, Esgar, Lindsay.

AN ACT

CONCERNING THE REGULATION OF SUPPLEMENTAL HEALTH-CARE STAFFING AGENCIES BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, AND, IN CONNECTION THEREWITH, REQUIRING SUPPLEMENTAL HEALTH-CARE STAFFING AGENCIES TO REPORT DATA TO THE DEPARTMENT OF LABOR AND EMPLOYMENT, AND REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT TO ANALYZE INFORMATION PROVIDED BY SUPPLEMENTAL HEALTH-CARE STAFFING AGENCIES TO DETERMINE THE NEED FOR REGULATION OF STAFFING AGENCIES AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 8-4-125 as follows:

8-4-125. Supplemental health-care staffing agencies - annual certification - reporting - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(b) "HEALTH-CARE FACILITY" MEANS A FACILITY LICENSED BY THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT PURSUANT TO SECTION 25-1.5-103 (1)(a).

(c) "HEALTH-CARE WORKER" MEANS A PERSON EMPLOYED BY A SUPPLEMENTAL HEALTH-CARE STAFFING AGENCY FOR TEMPORARY PLACEMENT IN A HEALTH-CARE FACILITY.

(d) "HEALTH-CARE WORKER PLATFORM" OR "PLATFORM" MEANS ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, OR ASSOCIATION THAT MAINTAINS A SYSTEM OR TECHNOLOGY THAT PROVIDES A MEDIA OR INTERNET PLATFORM FOR A HEALTH-CARE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

WORKER TO BE LISTED AND IDENTIFIED AS AVAILABLE FOR HIRE BY HEALTH-CARE FACILITIES SEEKING HEALTH-CARE WORKERS. UNDER A PLATFORM, THE HEALTH-CARE FACILITY SETS THE HOURLY RATES AND OTHER TERMS OF HIRE AND THE HEALTH-CARE WORKER, AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE OR AGENT OF THE ENTITY THAT MAINTAINS THE PLATFORM, DECIDES WHETHER TO AGREE TO THE HOURLY RATES AND OTHER TERMS OF HIRE.

(e)(I) "SUPPLEMENTAL HEALTH-CARE STAFFING AGENCY" OR "STAFFING AGENCY" MEANS AN INDIVIDUAL OR TYPE OF ORGANIZATION, INCLUDING ANY PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED LIABILITY LIMITED PARTNERSHIP, ASSOCIATION, TRUST, JOINT STOCK COMPANY, INSURANCE COMPANY, OR CORPORATION, WHETHER DOMESTIC OR FOREIGN, ENGAGED IN THE BUSINESS OF PROVIDING HEALTH-CARE WORKERS WHO ARE EMPLOYEES OF THE STAFFING AGENCY, AND, FOR A FEE, ASSIGNING THEM TO TEMPORARY PLACEMENTS IN HEALTH-CARE FACILITIES.

(II) "SUPPLEMENTAL HEALTH-CARE STAFFING AGENCY" DOES NOT INCLUDE:

(A) AN INDIVIDUAL ACTING AS AN INDEPENDENT CONTRACTOR WHO IS ONLY ENGAGED IN PROVIDING THE INDIVIDUAL'S SERVICES ON A TEMPORARY BASIS TO HEALTH-CARE FACILITIES; OR

(B) A HEALTH-CARE WORKER PLATFORM.

(2) (a) IT IS UNLAWFUL FOR ANY PERSON TO OPERATE A SUPPLEMENTAL HEALTH-CARE STAFFING AGENCY IN THIS STATE WITHOUT COMPLETING THE STAFFING AGENCY'S INITIAL CERTIFICATION AND REQUIRED ANNUAL CERTIFICATION WITH THE DEPARTMENT PURSUANT TO SECTION 8-70-114.

(b) ANY PERSON WHO VIOLATES THIS SECTION COMMITS A CIVIL INFRACTION AND MAY BE SUBJECT TO FINES DETERMINED BY THE DEPARTMENT.

(c) ON OR BEFORE SEPTEMBER 1, 2022, AND SEPTEMBER 1 EACH YEAR THEREAFTER, THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING SHALL PROVIDE THE DEPARTMENT WITH A LIST OF ALL KNOWN NAMES AND CONTACT INFORMATION FOR SUPPLEMENTAL HEALTH-CARE STAFFING AGENCIES OPERATING IN THE STATE.

(3) (a) NO LATER THAN OCTOBER 1, 2022, EACH SUPPLEMENTAL HEALTH-CARE STAFFING AGENCY SHALL MAINTAIN DETAILED DATA DESCRIBED IN SUBSECTION (3)(b) OF THIS SECTION. BY THE DEADLINES ESTABLISHED IN THIS SUBSECTION (3)(a), EACH STAFFING AGENCY SHALL PROVIDE REPORTS TO THE DEPARTMENT THAT CONTAIN THE INFORMATION AND CERTIFICATIONS SET FORTH IN SUBSECTION (3)(b) OF THIS SECTION. BEGINNING APRIL 30, 2023, AND CONTINUING EACH APRIL 30 THEREAFTER, A STAFFING AGENCY OPERATING IN THE STATE SHALL PROVIDE A REPORT COVERING THE PERIOD BETWEEN OCTOBER 1 OF THE PREVIOUS YEAR AND MARCH 31 OF THE CURRENT YEAR. FOR THE REPORTING PERIOD BETWEEN APRIL 1 AND SEPTEMBER 30 OF THE CURRENT YEAR, THE STAFFING AGENCY SHALL FILE A REPORT ANNUALLY, BEGINNING OCTOBER 31, 2023, AND CONTINUING EACH OCTOBER 31 THEREAFTER.

(b) AT A MINIMUM, A STAFFING AGENCY'S BIENNIAL REPORTS REQUIRED PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION MUST INCLUDE:

(I) THE NAME OF EACH DIRECT AND INDIRECT OWNER OF THE STAFFING AGENCY;

(II) IF THE STAFFING AGENCY'S DIRECT OWNER IS A CORPORATION, COPIES OF THE ARTICLES OF INCORPORATION AND CURRENT BYLAWS;

(III) A DETAILED LISTING OF THE AVERAGE AMOUNT CHARGED DURING EACH QUARTER OF THE REPORTING PERIOD TO A HEALTH-CARE FACILITY FOR EACH CATEGORY OF HEALTH-CARE WORKER PROVIDING SERVICES TO THE HEALTH-CARE FACILITY;

(IV) A DETAILED LISTING OF THE AVERAGE AMOUNT PAID DURING EACH QUARTER OF THE REPORTING PERIOD TO HEALTH-CARE WORKERS FOR THEIR SERVICES FOR EACH CATEGORY OF HEALTH-CARE WORKER PROVIDING SERVICES;

(V) THE STAFFING AGENCY'S CERTIFICATION THAT EACH HEALTH-CARE WORKER CONTRACTED TO A HEALTH-CARE FACILITY DURING THE REPORTING PERIOD HAD A CURRENT, UNRESTRICTED LICENSE OR CERTIFICATION IN GOOD STANDING AND MET THE TRAINING AND CONTINUING EDUCATION STANDARDS FOR THE POSITION WITH THE HEALTH-CARE FACILITY THROUGHOUT THE ENTIRETY OF THE REPORTING PERIOD;

(VI) THE STAFFING AGENCY'S CERTIFICATION THAT EACH HEALTH-CARE WORKER CONTRACTED TO A HEALTH-CARE FACILITY HAD SUCCESSFULLY COMPLETED ALL BACKGROUND CHECKS REQUIRED BY FEDERAL AND STATE LAW, RULE, AND REGULATION RELATING TO THE HEALTH-CARE POSITION AND HEALTH-CARE FACILITY IN WHICH THE HEALTH-CARE WORKER WAS PLACED DURING THE REPORTING PERIOD; AND

(VII) THE STAFFING AGENCY'S CERTIFICATION THAT THE STAFFING AGENCY MAINTAINED PROFESSIONAL LIABILITY INSURANCE THROUGHOUT THE ENTIRETY OF THE REPORTING PERIOD FOR EACH HEALTH-CARE WORKER CONTRACTED TO A HEALTH-CARE FACILITY DURING THE REPORTING PERIOD.

(c) THE DEPARTMENT SHALL ESTABLISH THE MANNER AND FORM OF REPORTING PURSUANT TO THIS SUBSECTION (3).

(4) (a) (I) THE DEPARTMENT SHALL IMPOSE A FINE IN THE AMOUNT OF FIVE HUNDRED DOLLARS FOR A REPORT REQUIRED PURSUANT TO SUBSECTION (3) OF THIS SECTION THAT:

(A) IS NOT SUBMITTED WITHIN THIRTY DAYS AFTER THE REPORTING DEADLINE; OR

(B) THE DEPARTMENT DEEMS NONCOMPLIANT WITH THE REQUIREMENTS OF SUBSECTION (3) OF THIS SECTION.

(II) THE DEPARTMENT MAY WAIVE THE FINE IF THE STAFFING AGENCY IS ABLE TO SHOW GOOD CAUSE FOR THE DELAY IN SUBMITTING THE REPORT OR FOR SUBMITTING A NONCOMPLIANT REPORT.

(b) THE DEPARTMENT SHALL SEND NOTICE TO EACH STAFFING AGENCY THAT:

(I) HAS NOT SUBMITTED THE REQUIRED BIENNIAL REPORT ON OR BEFORE THE DEADLINE; OR

(II) HAS NOT SUBMITTED A COMPLIANT REPORT.

(c) IF THE STAFFING AGENCY DOES NOT SUBMIT A COMPLIANT REPORT WITHIN THIRTY DAYS AFTER THE DATE OF THE DEPARTMENT'S NOTICE OF NONCOMPLIANCE, THE DEPARTMENT SHALL IMPOSE A FINE OF TEN THOUSAND DOLLARS, AND FOR A FAILURE IN ANY SUBSEQUENT REPORTING PERIOD TO TIMELY SUBMIT A COMPLIANT REPORT WITHIN THIRTY DAYS AFTER THE DEPARTMENT'S NOTICE OF NONCOMPLIANCE, A FINE OF TWENTY THOUSAND DOLLARS. THE DEPARTMENT MAY WAIVE OR REDUCE THE STAFFING AGENCY'S FINE IF THE STAFFING AGENCY IS ABLE TO SHOW GOOD CAUSE FOR DELAYING THE SUBMISSION OF THE REPORT.

(d) THE DEPARTMENT SHALL TRANSMIT ANY PENALTIES IMPOSED AND COLLECTED PURSUANT TO THIS SUBSECTION (4) TO THE STATE TREASURER, WHO SHALL CREDIT THE MONEY TO THE WAGE THEFT ENFORCEMENT FUND CREATED IN SECTION 8-4-113 (3).

(5) THE DEPARTMENT SHALL PROVIDE COPIES OF THE BIENNIAL REPORTS REQUIRED PURSUANT TO SUBSECTION (3) OF THIS SECTION TO THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND TO THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING FOR PURPOSES OF ANALYZING THE INFORMATION PROVIDED BY THE SUPPLEMENTAL HEALTH-CARE STAFFING AGENCIES AND DETERMINING THE NEED FOR REGULATION OF STAFFING AGENCIES.

SECTION 2. Appropriation. (1) For the 2022-23 state fiscal year, \$427,591 is appropriated to the department of labor and employment for use by the division of labor standards and statistics. This appropriation is from the general fund. To implement this act, the division may use this appropriation for program costs, which amount is based on an assumption that the division will require an additional 2.0 FTE.

(2) For the 2022-23 state fiscal year, \$39,358 is appropriated to the department of public health and environment for use by the health facilities and emergency medical services division. To implement this act, the division may use this appropriation as follows:

(a) \$24,071 for administration and operations, which amount is based on an assumption that the division will require an additional 0.3 FTE; and

(b) \$15,545 for the purchase of information technology services.

(3) For the 2022-23 state fiscal year, \$15,545 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of public health and environment under subsection (1)(b) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of public health and environment.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 3, 2022