

AMENDMENTS TO LB191

(Amendments to Standing Committee amendments, AM1330)

Introduced by Halloran, 33.

1 1. Insert the following new sections:

2 Section 1. Sections 1 to 10 of this act shall be known and may be
3 cited as the Health Care Staffing Agency Registration Act.

4 Sec. 2. For purposes of the Health Care Staffing Agency
5 Registration Act:

6 (1) Commissioner means the Commissioner of Labor;

7 (2) Department means the Department of Labor;

8 (3)(a) Direct services means services provided to consumers through
9 person-to-person contact; and

10 (b) Direct services does not mean:

11 (i) Services performed by an individual in a health care entity that
12 do not involve the provision of any direct service or treatment to a
13 consumer of a health care entity;

14 (ii) The practice of medicine and surgery or osteopathic medicine
15 and surgery by an individual licensed under the Medicine and Surgery
16 Practice Act; or

17 (iii) The practice of nursing by a nurse practitioner licensed under
18 the Nurse Practitioner Practice Act;

19 (4) Health care entity means a health care facility or a health care
20 service;

21 (5) Health care facility has the same meaning as in section 71-413;

22 (6) Health care service has the same meaning as in section 71-415;

23 (7) Health care staffing agency means an individual, a trust, a
24 partnership, a corporation, a limited liability partnership, a limited
25 liability company, or any other business entity that provides one or more
26 temporary staff workers to a separate, third-party health care entity.

1 Health care staffing agency includes a health care technology platform;

2 (8) Health care technology platform means an individual, a trust, a
3 partnership, a corporation, a limited liability partnership, a limited
4 liability company, or any other business entity that operates, offers, or
5 maintains a system or technology that provides an Internet-based or
6 application-based marketplace where staff workers, as independent
7 contractors, in their sole discretion, choose when and how often to
8 utilize the platform to apply to work open shifts for rates that are
9 established directly between health care entities and the staff workers;

10 (9)(a) Nursing services means services that may be provided only by
11 or under the supervision of a nurse; and

12 (b) Nursing services does not mean the practice of nursing by a
13 nurse practitioner licensed under the Nurse Practitioner Practice Act;
14 and

15 (10) Staff worker means an individual who contracts with or is
16 employed by a health care staffing agency or a health care technology
17 platform to provide direct services or nursing services for a health care
18 entity.

19 Sec. 3. (1) A health care staffing agency operating in the state
20 shall register annually with the department. As a condition of
21 eligibility for registration, the applicant shall certify that the health
22 care staffing agency will not enforce any noncompete clause in any
23 contract existing prior to registration with any health care entity or
24 staff worker that restricts in any manner the employment opportunities of
25 a staff worker.

26 (2) An applicant for registration and renewal of registration shall,
27 for each separate location at which the applicant intends to operate as a
28 health care staffing agency in Nebraska or for the state generally if the
29 applicant is a health care technology platform operating in Nebraska that
30 does not maintain a physical location in Nebraska, file an application in
31 a form prescribed by the department and pay an annual registration fee of

1 one thousand dollars to the department. An application for the renewal of
2 a registration shall be made at least sixty days prior to the expiration
3 of the then-current registration period. As applicable, the department
4 shall issue the applicant a separate certification of registration for
5 each location at which the applicant intends to operate as a health care
6 staffing agency in Nebraska upon approval of registration and payment of
7 the fee. The application shall include appropriate evidence of ability to
8 comply with the requirements of section 4 of this act. The department
9 shall remit the fees to the State Treasurer for credit to the General
10 Fund.

11 (3) If the commissioner denies an application for registration or
12 renewal of registration of a health care staffing agency, the
13 commissioner shall issue a notice of denial. The health care staffing
14 agency may file an appeal with the commissioner within twenty days after
15 the date of mailing of the notice of denial. Except as otherwise provided
16 in the Health Care Staffing Agency Registration Act, an appeal under this
17 section shall be governed by the Administrative Procedure Act.

18 Sec. 4. (1) A health care staffing agency shall:

19 (a) Ensure that each staff worker complies with all applicable
20 requirements relating to the health requirements and qualifications for
21 personnel providing direct services or nursing services in a health care
22 entity;

23 (b) Document that each staff worker meets the minimum licensing,
24 certification, training, and health requirements as applicable for the
25 staff worker's position in the health care entity;

26 (c) Maintain a record for each staff worker and report, file, or
27 otherwise provide any required documentation to any external party or
28 regulator if such duties would otherwise be the responsibility of the
29 health care entity if the staff worker was an employee of the health care
30 entity; and

31 (d) Maintain or require the staff worker to maintain professional

1 and general liability insurance coverage with minimum per occurrence
2 coverage of one million dollars and aggregate coverage of three million
3 dollars to insure against loss, damage, or expense incident to a claim
4 arising out of the death or injury of any individual as the result of
5 negligence or malpractice in the provision of services by the health care
6 staffing agency or a staff worker of the agency.

7 (2) A health care staffing agency shall submit a report to the
8 department on a quarterly basis, in the form and manner prescribed by the
9 commissioner, for each health care entity participating in medicare or
10 medicaid and contracting with the agency, that includes the following
11 information by provider type:

12 (a) A detailed list of the average amount charged to the health care
13 entity for each category of staff worker in Nebraska, including any
14 ancillary charges or fees; and

15 (b) A detailed list by licensing category of the average amount paid
16 by the agency to staff workers in Nebraska.

17 (3) Information contained in quarterly reports shall not be subject
18 to public disclosure but shall be accessible to the Division of Medicaid
19 and Long-Term Care of the Department of Health and Human Services and the
20 Department of Labor for use in reporting as required in section 9 of this
21 act.

22 (4) A health care staffing agency shall provide the department with
23 (a) proof of a certificate or policy of insurance written by an insurance
24 carrier duly authorized to do business in this state which gives the
25 effective dates of workers' compensation insurance coverage indicating
26 that it is in force, (b) proof of a certificate evidencing approval of
27 self-insurance privileges as provided by the Nebraska Workers'
28 Compensation Court pursuant to section 48-145, or (c) a signed statement
29 indicating that the health care staffing agency is not required to carry
30 workers' compensation insurance pursuant to the Nebraska Workers'
31 Compensation Act.

1 (5) A health care staffing agency that ceases to engage in the
2 business of or act as a health care staffing agency shall advise the
3 department as to the disposition of all files and other records relating
4 to its business as a health care staffing agency.

5 Sec. 5. (1) A health care staffing agency shall not:

6 (a) Include in any contract with a staff worker or a health care
7 entity a noncompete clause restricting in any manner the employment
8 opportunities of a staff worker; or

9 (b) In any contract with a staff worker or a health care entity,
10 require payment of liquidated damages, employment fees, or other
11 compensation if the staff worker is subsequently hired as a permanent
12 employee of the health care entity.

13 (2) Any clause of a contract that violates this section is void.

14 Sec. 6. (1) If the commissioner determines that a health care
15 staffing agency (a) failed to register as required by the Health Care
16 Staffing Agency Registration Act, (b) violated section 4 or 5 of this
17 act, (c) failed to provide documentation or evidence pursuant to section
18 7 of this act, or (d) knowingly provided to a health care entity a staff
19 worker who has an illegally or fraudulently obtained or issued diploma,
20 registration, license, certification, or background check, the
21 commissioner may take one or more of the following actions:

22 (i) Assess a civil penalty of not more than five hundred dollars for
23 a first offense and five thousand dollars for each subsequent offense;
24 and

25 (ii) Revoke the registration for a period of one calendar year. This
26 revocation shall apply to all locations of the health care staffing
27 agency.

28 (2) If the commissioner determines that a civil penalty or
29 revocation is warranted under this section, the commissioner shall issue
30 a notice of citation that notifies the health care staffing agency of the
31 proposed civil penalty or revocation. The notice of citation shall be

1 sent by certified mail or any other manner of delivery by which the
2 United States Postal Service can verify delivery.

3 (3) A health care staffing agency may appeal any notice of citation
4 by filing an appeal with the commissioner within twenty days after the
5 date of mailing of the notice of citation. Except as otherwise provided
6 in the Health Care Staffing Agency Registration Act, an appeal under this
7 subsection shall be governed by the Administrative Procedure Act.

8 (4) No penalty or revocation shall become effective until the later
9 of the day following expiration of the appeal period or thirty days after
10 a decision on appeal has become final. Once a revocation becomes
11 effective, it is effective for one calendar year and applies to revoke
12 any then-current registration for all locations of the health care
13 staffing agency and to preclude the health care staffing agency for
14 applying for a new registration for any location during the revocation
15 period. A health care staffing agency that has substantially common
16 ownership or management as a health care staffing agency whose
17 registration has been revoked under this section shall not be eligible
18 for registration during the revocation period.

19 (5) In any civil action to enforce the Health Care Staffing Agency
20 Registration Act, the commissioner and the state may be represented by
21 any qualified attorney who is employed by the commissioner and is
22 designated by the commissioner for this purpose or, at the commissioner's
23 request, by the Attorney General.

24 Sec. 7. (1) The commissioner shall establish a system for the
25 public to report complaints against a health care staffing agency or
26 staff worker regarding compliance with the Health Care Staffing Agency
27 Registration Act. The commissioner shall investigate any complaint
28 received.

29 (2) The commissioner may investigate to determine if a health care
30 staffing agency is in compliance with the Health Care Staffing Agency
31 Registration Act and shall conduct random audits of health care staffing

1 agencies with staff workers in Nebraska. Any investigation or audit shall
2 take place at such times and places as the commissioner directs. An
3 investigation or audit may be conducted without prior notice.

4 (3) For purposes of any investigation or audit under this section,
5 the commissioner or any officer designated by the commissioner may
6 administer oaths and affirmations, subpoena witnesses and compel their
7 attendance, receive evidence, and require the production of any books,
8 papers, correspondence, memoranda, agreements, or other documents or
9 records that the commissioner deems relevant or material to the
10 investigation.

11 (4) In case of contumacy by or refusal to obey a subpoena issued to
12 any person, any court of competent jurisdiction, upon application by the
13 commissioner, may issue to such person an order requiring such person to
14 appear before the commissioner or the officer designated by the
15 commissioner and produce documentary evidence, if so ordered, or give
16 evidence affecting the matter under investigation or in question. Any
17 failure to obey the order of the court may be punished by the court as
18 contempt.

19 Sec. 8. (1) The department shall create a database of health care
20 staffing agencies registered under the Health Care Staffing Agency
21 Registration Act. The department shall make the database accessible to
22 the public on its website.

23 (2) The database shall include, but not be limited to, the following
24 information:

25 (a) The name, telephone number, and address of the health care
26 staffing agency;

27 (b) The name of each owner, member, officer, and partner;

28 (c) The date of registration approval for the health care staffing
29 agency; and

30 (d) The date of expiration or revocation of the registration of the
31 health care staffing agency.

1 Sec. 9. The department shall prepare and submit an annual report, no
2 later than December 31 of each year, using the reported data pursuant to
3 subsection (2) of section 4 of this act. The report shall contain
4 aggregate data, by county in which the direct services were performed,
5 the average amount charged to the health care facilities by nurse
6 agencies for each individual staff worker category, and the average
7 amount paid to each individual staff worker category. The report shall be
8 submitted electronically to the Clerk of the Legislature, the Health and
9 Human Services Committee of the Legislature, and the Appropriations
10 Committee of the Legislature.

11 Sec. 10. The department may adopt and promulgate rules and
12 regulations to carry out the Health Care Staffing Agency Registration
13 Act.

14 Sec. 29. Section 81-401, Revised Statutes Cumulative Supplement,
15 2022, is amended to read:

16 81-401 The Governor, through the agency of the Department of Labor
17 created by section 81-101, shall have power:

18 (1) To foster, promote, and develop the welfare of wage earners;

19 (2) To improve working conditions;

20 (3) To advance opportunities for profitable employment;

21 (4) To collect, collate, assort, systematize, and report statistical
22 details relating to all departments of labor, especially in its relation
23 to commercial, industrial, social, economic, and educational conditions
24 and to the permanent prosperity of the manufacturing and productive
25 industries;

26 (5) To acquire and distribute useful information on subjects
27 connected with labor in the most general and comprehensive sense of the
28 word;

29 (6) To acquire and distribute useful information concerning the
30 means of promoting the material, social, intellectual, and moral
31 prosperity of laboring men and women;

1 (7) To acquire and distribute information as to the conditions of
2 employment and such other facts as may be deemed of value to the
3 industrial interests of the state;

4 (8) To acquire and distribute information in relation to the
5 prevention of accidents, occupational diseases, and other related
6 subjects;

7 (9) To acquire and distribute useful information regarding the role
8 of the part-time labor force and the manner in which such labor force
9 affects the economy and citizens of the state; and

10 (10) To administer and enforce all of the provisions of the
11 Employment Security Law, the Farm Labor Contractors Act, the Health Care
12 Staffing Agency Registration Act, and the Wage and Hour Act and Chapter
13 48, articles 2, 3, 4, and 5, and for that purpose there is imposed upon
14 the Commissioner of Labor the duty of executing all of the provisions of
15 such acts, law, and articles.

16 Sec. 32. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 29, and 34 of this
17 act become operative on January 1, 2024. The other sections of this act
18 become operative on their effective date.

19 Sec. 34. Original section 81-401, Revised Statutes Cumulative
20 Supplement, 2022, is repealed.

21 2. Renumber the remaining sections and correct internal references
22 accordingly.