

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 22-1013.01 Brita Darling x2241

SENATE BILL 22-210

SENATE SPONSORSHIP

Zenzinger and Cooke, Ginal, Pettersen, Smallwood

HOUSE SPONSORSHIP

Lontine and Soper,

Health & Human Services
Finance
Appropriations

Finance
Appropriations

A BILL FOR AN ACT

101 CONCERNING THE REGULATION OF SUPPLEMENTAL HEALTH-CARE
102 STAFFING AGENCIES BY THE DEPARTMENT OF PUBLIC HEALTH
103 AND ENVIRONMENT, AND, IN CONNECTION THEREWITH,
104 REQUIRING SUPPLEMENTAL HEALTH-CARE STAFFING AGENCIES
105 TO REPORT DATA TO THE DEPARTMENT OF LABOR AND
106 EMPLOYMENT, AND REQUIRING THE DEPARTMENT OF PUBLIC
107 HEALTH AND ENVIRONMENT TO ANALYZE INFORMATION
108 PROVIDED BY SUPPLEMENTAL HEALTH-CARE STAFFING
109 AGENCIES TO DETERMINE THE NEED FOR REGULATION OF
110 STAFFING AGENCIES AND MAKING AN APPROPRIATION.

HOUSE
Amended 2nd Reading
May 10, 2022

SENATE
3rd Reading Unamended
May 3, 2022

Bill Summary

(Note: This summary applies to this bill as introduced and does

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
May 2, 2022

not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill requires the department of public health and environment (department) to license supplemental health-care staffing agencies (staffing agencies) that employ nurses, nurse aids, physical and occupational therapists, and physical therapist and occupational therapy assistants (health-care workers). A staffing agency is defined as an entity that employs health-care workers and, for a fee, assigns them to temporary placements in nursing care facilities or assisted living residences (health-care facilities) on a temporary basis for a fee. The bill differentiates a staffing agency from a health-care worker platform where health-care workers can be listed for hire by a health-care facility.

The bill includes qualifications for a license; criteria for applying for a license and the related fee; and provisions for the issuance, renewal, suspension, or revocation of the license.

On and after April 1, 2023, a person operating an unlicensed staffing agency is guilty of a civil infraction and is subject to a fine and may be subject to civil penalties.

The bill specifies minimum standards for staffing agencies as established by the state board of health (state board) by rule. In part, the minimum standards:

- Require that a staffing agency maintain professional liability insurance, workers' compensation insurance, and a surety bond; and
- Prohibit a staffing agency from restricting employment opportunities of its health-care worker employees, including a prohibition against requiring liquidated damages, employment fees, or other compensation from health-care workers, if the staffing agency employee is hired as a permanent employee by the health-care facility.

A staffing agency shall check the credentials of health-care worker employees and require a background check and a check of the Colorado adult protective services (CAPS) database for employees.

The bill requires each staffing agency to report quarterly to the department concerning the average amount charged for services to health-care facilities and the average amount paid for those services. A staffing agency that fails to report is subject to civil fines and suspension or nonrenewal of its license.

By December 31, 2023, the department shall submit a report to certain committees of the general assembly and to the governor concerning the department's recommendations for caps or other limitations on service rates and amounts charged to health-care facilities

for services provided by a staffing agency's health-care workers. In formulating its recommendations, the department shall conduct a stakeholder process with affected providers and agencies.

The bill requires the department to maintain a current list of licensed staffing agencies and make the list publicly available on the department's website.

The bill creates a cash fund for licensing fees and penalties.

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

2
3 **SECTION 1.** In Colorado Revised Statutes, add 8-4-125 as
4 follows:

5 **8-4-125. Supplemental health-care staffing agencies - annual**
6 **certification - reporting - definitions.** (1) AS USED IN THIS SECTION,
7 UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

16 (d) "HEALTH-CARE WORKER PLATFORM" OR "PLATFORM" MEANS
17 ANY PERSON, FIRM, CORPORATION, PARTNERSHIP, OR ASSOCIATION THAT
18 MAINTAINS A SYSTEM OR TECHNOLOGY THAT PROVIDES A MEDIA OR
19 INTERNET PLATFORM FOR A HEALTH-CARE WORKER TO BE LISTED AND
20 IDENTIFIED AS AVAILABLE FOR HIRE BY HEALTH-CARE FACILITIES SEEKING
21 HEALTH-CARE WORKERS. UNDER A PLATFORM, THE HEALTH-CARE
22 FACILITY SETS THE HOURLY RATES AND OTHER TERMS OF HIRE AND THE

1 HEALTH-CARE WORKER, AS AN INDEPENDENT CONTRACTOR AND NOT AS
2 AN EMPLOYEE OR AGENT OF THE ENTITY THAT MAINTAINS THE PLATFORM,
3 DECIDES WHETHER TO AGREE TO THE HOURLY RATES AND OTHER TERMS
4 OF HIRE.

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

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

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

19 (B) A HEALTH-CARE WORKER PLATFORM.

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

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

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

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

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

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

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

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

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

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

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

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

27 (c) THE DEPARTMENT SHALL ESTABLISH THE MANNER AND FORM

1 OF REPORTING PURSUANT TO THIS SUBSECTION (3).

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

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

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

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

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

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

16 (II) HAS NOT SUBMITTED A COMPLIANT REPORT.

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

26 (d) THE DEPARTMENT SHALL TRANSMIT ANY PENALTIES IMPOSED
27 AND COLLECTED PURSUANT TO THIS SUBSECTION (4) TO THE STATE

1 TREASURER, WHO SHALL CREDIT THE MONEY TO THE WAGE THEFT
2 ENFORCEMENT FUND CREATED IN SECTION 8-4-113 (3).

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

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

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

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

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

24 (3) For the 2022-23 state fiscal year, \$15,545 is appropriated to
25 the office of the governor for use by the office of information technology.
26 This appropriation is from reappropriated funds received from the
27 department of public health and environment under subsection (1)(b) of

1 this section. To implement this act, the office may use this appropriation
2 to provide information technology services for the department of public
3 health and environment.

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