

By: Vo

H.B. No. 2459

A BILL TO BE ENTITLED

AN ACT

relating to the administration of violations and administrative penalties of the Employment of Children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 51.033 and 51.034, Labor Code, are repealed.

SECTION 2. Subchapter D, Chapter 51, Labor Code, is amended by adding Sections 51.033 through 51.039 to read as follows:

Sec. 51.033. ADMINISTRATIVE PENALTY. (a) If a child labor investigator determines that a person who employs a child, or individual restricted by section 51.016(b), has violated this chapter or a rule adopted under this chapter, the investigator may assess an administrative penalty against that person as provided by this subchapter.

(b) The penalty for a violation may be in an amount not to exceed \$10,000.

(c) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

Sec. 51.034. PRELIMINARY DETERMINATION ORDER. (a) If,

1 after examination of a possible violation and the facts relating to
2 that possible violation, the child labor investigator determines
3 that a violation has occurred, the child labor investigator shall
4 issue a preliminary determination order to the person charged with
5 the violation.

6 (b) The preliminary determination order shall state the
7 facts on which the preliminary determination order is based, the
8 occurrence of a violation, the fact that an administrative penalty
9 is to be imposed, and the amount of the penalty.

10 (c) The preliminary determination order must inform the
11 person that the person has a right to a hearing on the occurrence of
12 the violation, the amount of the penalty, or both the occurrence of
13 the violation and the amount of the penalty.

14 (d) The child labor investigator shall mail notice of the
15 preliminary determination order to the person's last known address,
16 as reflected by commission records.

17 Sec. 51.0341. ESTABLISHMENT OF CHILD LABOR APPEAL
18 TRIBUNALS. (a) The commission shall establish one or more
19 impartial child labor appeal tribunals to hear and decide disputed
20 preliminary determination orders if the commission determines that
21 establishment of those tribunals is necessary to ensure prompt
22 disposal of child labor cases on appeal.

23 (b) Each child labor appeal tribunal shall be composed of a
24 salaried examiner appointed by the commission.

25 Sec. 51.0342. REDETERMINATION BY CHILD LABOR INVESTIGATOR.

26 (a) If the child labor investigator discovers an error in
27 connection with a preliminary determination order or discovers

1 additional information not previously available, the child labor
2 investigator, within the period specified in section 51.035, may
3 reconsider and reissue the preliminary determination order. An
4 investigator's reissued preliminary determination order voids and
5 replaces the order requiring correction.

6 (b) A reissued preliminary determination order becomes
7 final unless a party files an appeal from the reissued preliminary
8 determination order within the period specified in section 51.035.
9 The period to request an appeal shall begin on the date the examiner
10 mails the reissued preliminary determination order.

11 (c) Notwithstanding subsection (a) of this section, if a
12 child labor investigator mails a preliminary determination order to
13 a person's incorrect address solely because of the child labor
14 investigator's own error, the child labor investigator may reissue
15 a preliminary determination order to the party's correct address at
16 any time.

17 Sec. 51.035. REQUEST FOR HEARING ON PRELIMINARY ORDER. (a)
18 A person may request a hearing before a child labor appeal tribunal
19 to appeal a preliminary determination order made under Section
20 51.034.

21 (b) The request for hearing must be made in writing not
22 later than the 21st day after the date the child labor investigator
23 mails the notice of the preliminary determination order.

24 Sec. 51.0351. PRELIMINARY ORDER FINAL IF HEARING NOT
25 REQUESTED. If the person does not request a hearing to appeal a
26 preliminary determination order within the period prescribed by
27 Section 51.035, the order becomes the final order of the commission

1 for all purposes, and the person is not entitled to judicial review
2 of the order under this subchapter.

3 Sec. 51.0352. PAYMENT REQUIRED IF HEARING NOT REQUESTED. A
4 person that does not request a hearing within the period prescribed
5 by Section 51.035 to appeal a preliminary determination order shall
6 pay the penalty amount ordered to the commission not later than the
7 21st day after the date the commission mails notice of the order.

8 Sec. 51.0353. NOTICE; TIME FOR HEARING. (a) A notice
9 regarding an administrative hearing conducted under this
10 subchapter must be mailed by the child labor appeal tribunal not
11 later than the 21st day after the date a request for the hearing is
12 received by the commission.

13 (b) As soon as practicable, but not later than the 45th day
14 after the date a notice is mailed under Subsection (a), the tribunal
15 shall conduct the hearing.

16 Sec. 51.0354. HEARING PROCEDURES. (a) A hearing conducted
17 under this subchapter is subject to the rules and hearings
18 procedures used by the commission in the determination of a claim
19 for unemployment compensation benefits.

20 (b) The hearing is not subject to Chapter 2001, Government
21 Code.

22 Sec. 51.0355. CONSIDERATION OF PRELIMINARY DETERMINATION
23 ORDER. The child labor appeal tribunal may modify, affirm, or
24 rescind a preliminary determination order.

25 Sec. 51.0356. ORDER AFTER HEARING. After a hearing, the
26 child labor appeal tribunal shall enter a written order for the
27 payment of any penalty the child labor appeal tribunal assesses.

1 Sec. 51.036. NOTICE AND FINALITY OF ORDER.

2 (a) The child labor appeal tribunal shall mail to each party
3 to the appeal notice of:

4 (1) the decision;

5 (2) the violation; and

6 (3) the amount of any penalty assessed.

7 (b) The notice shall be mailed to a party's last known
8 address, as shown by commission records.

9 (c) The order of the child labor appeal tribunal becomes
10 final 14 days after the date on which it is mailed unless reopened
11 by the child labor tribunal or a party to the decision initiates a
12 further appeal to the commission as provided by this subchapter.

13 Sec. 51.0361. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE
14 CHILD LABOR APPEAL TRIBUNAL. (a) The commission by order may
15 remove to itself or transfer to another child labor appeal tribunal
16 the proceedings pending before a child labor appeal tribunal.

17 (b) The commission promptly shall mail to the parties to the
18 proceedings a notice of the order under Subsection (a).

19 (c) A quorum of the commission shall hear a proceeding
20 removed to the commission under Subsection (a).

21 Sec. 51.0362. COMMISSION REVIEW OF CHILD LABOR APPEAL
22 TRIBUNAL ORDER. The commission may:

23 (1) on its own motion:

24 (A) affirm, modify, or set aside an order issued
25 under Section 51.036 on the basis of the evidence previously
26 submitted in the case; or

27 (B) direct the taking of additional evidence; or

1 (2) permit any of the parties affected by the order to
2 initiate a further appeal before the commission.

3 Sec. 51.0363. NOTICE OF COMMISSION ACTION. (a) The
4 commission shall mail to each party to the appeal under Section
5 51.0362 notice of:

- 6 (1) the commission's decision;
7 (2) the violation;
8 (3) the amount of any penalty assessed; and
9 (4) the person's right to judicial review of the order.

10 (b) The notice shall be mailed to a party's last known
11 address, as shown by commission records.

12 Sec. 51.0364. FINALITY OF COMMISSION ORDER. An order of the
13 commission becomes final 14 days after the date the order is mailed
14 unless before that date:

- 15 (1) the commission by order reopens the appeal; or
16 (2) a party to the appeal files a written motion for
17 rehearing.

18 Sec. 51.037. JUDICIAL REVIEW. (a) A person who has
19 exhausted the person's administrative remedies under this chapter,
20 other than a motion for rehearing, may bring a suit to appeal the
21 order.

22 (b) The suit must be filed not later than the 30th day after
23 the date the final order is mailed.

24 (c) The commission must be made a defendant in the suit.

25 (d) The suit must be brought in the county of the person's
26 residence. If the person is not a resident of this state, the suit
27 must be brought in the county in this state in which the person has

1 its principal place of business.

2 (e) Judicial review of the order of the commission is in the
3 manner applied to an appeal from a final decision under Subtitle A,
4 Title 4. The standard of review is under the substantial evidence
5 rule.

6 (f) If the court sustains the occurrence of the violation,
7 the court may uphold or reduce the amount of the penalty and order
8 the person to pay the full or reduced amount of the penalty. If the
9 court does not sustain the occurrence of the violation, the court
10 shall order that a penalty is not owed.

11 Sec. 51.038. PAYMENT TO COMMISSION; ESCROW PENDING REVIEW.

12 (a) Not later than the 30th day after the date a commission order
13 becomes final, the person required to pay a penalty shall:

14 (1) pay the amount to the commission; or
15 (2) if the person files a petition for judicial review
16 in a court of competent jurisdiction contesting the final order,
17 send the amount to the commission for deposit in an
18 interest-bearing escrow account.

19 (b) When the judgment of the court becomes final, the court
20 shall proceed under this subsection. If the person paid the amount
21 of the penalty and if that amount is reduced or is not upheld by the
22 court, the court shall order that the appropriate amount plus
23 accrued interest be remitted to the person. The rate of the
24 interest is the rate charged on loans to depository institutions by
25 the New York Federal Reserve Bank, and the interest shall be paid
26 for the period beginning on the date the penalty was paid and ending
27 on the date the penalty is remitted.

1 Sec. 51.0385. DEPOSIT OF PENALTY. A penalty collected
2 under this section shall be remitted to the comptroller for deposit
3 in the general revenue fund.

4 Sec. 51.039. INJUNCTION: ATTORNEY GENERAL'S ACTION. The
5 attorney general may seek injunctive relief in district court
6 against an employer who repeatedly violates the requirements
7 established by this chapter relating to the employment of children.

8 SECTION 3. Section 301.0015, Labor Code, is amended to read
9 as follows:

10 Sec. 301.0015. GUIDELINES REGARDING FUNCTIONS OF
11 COMMISSION AND STAFF. (a) In administering its functions under
12 this title or another law, the commission shall limit its
13 activities to:

14 (1) setting commission policies, including policies
15 that clearly separate the policymaking responsibilities of the
16 commission and the management responsibilities of the executive
17 director and commission staff;

18 (2) giving general direction to the executive director
19 regarding the implementation of the commission's policies, and
20 holding the executive director accountable for implementing the
21 policies;

22 (3) approving the commission's budget recommendation
23 to the legislature;

24 (4) reviewing under Subchapter D, Chapter 212, the
25 decision of an appeal tribunal regarding unemployment
26 compensation;

27 (5) reviewing under Subchapter D, Chapter 61, the

1 decision of a wage claim appeal tribunal regarding a wage claim;

2 (6) adopting rules necessary to administer the
3 commission's policies, including rules necessary for the
4 administration of this title and rules governing required reports,
5 procedures, and orders;

6 (7) responding to questions and comments that are
7 directed to the commission by the executive director and that
8 relate to setting or clarifying commission policies or relate to
9 other matters of general interest to the commission; ~~and~~

10 (8) requesting information from commission staff; ~~i~~
11 and

12 (9) reviewing under Subchapter D, Chapter 51, the
13 decision of a child labor appeal tribunal regarding a child labor
14 violation and/or an administrative penalty.

15 (b) Except as provided by Subsection (c), the commission may
16 conduct the activities listed in Subsection (a) only when acting as
17 a governmental body.

18 (c) The commission, acting as a governmental body, or an
19 individual member of the commission may conduct the activities
20 listed in Subsections (a)(7) and (8).

21 (d) In administering its functions under this title or
22 another law, the commission, acting as a governmental body, or an
23 individual member of the commission may not:

24 (1) direct the day-to-day operations of the executive
25 director or other commission staff; or

26 (2) establish the details for the implementation of
27 commission policies or direct the executive director or other

1 commission staff about those details.

2 SECTION 4. Section 301.006, Labor Code, is amended to read
3 as follows:

4 Sec. 301.006. CHAIR. (a) The governor shall designate the
5 chair of the commission from among the members of the commission.
6 The chair shall serve in that capacity at the pleasure of the
7 governor for a two-year term. The governor may redesignate the same
8 member to serve consecutive terms.

9 (b) Notwithstanding Subsection (a), the member of the
10 commission who represents the public shall serve as chair:

11 (1) when the commission acts under:

12 (A) Chapter 21;

13 (B) Subchapter D, Chapter 61;

14 (C) Subchapter D, Chapter 212; ~~or~~

15 (D) Chapter 301, Property Code; ~~and~~

16 (E) Subchapter D, Chapter 51; and

17 (2) in commission hearings involving unemployment
18 insurance issues regarding tax coverage, contributions, or
19 reimbursements.

20 SECTION 5. The change in law made by this Act applies only
21 to a preliminary determination order issued on or after the
22 effective date of this Act. A preliminary determination order
23 issued before that date is governed by the law in effect on the date
24 that the preliminary determination order issued, and the former law
25 is continued in effect for that purpose.

26 SECTION 6. This Act takes effect September 1, 2023.