

1-1 By: Vo (Senate Sponsor - Alvarado) H.B. No. 2459
 1-2 (In the Senate - Received from the House April 26, 2023;
 1-3 April 27, 2023, read first time and referred to Committee on
 1-4 Natural Resources & Economic Development; May 9, 2023, reported
 1-5 favorably by the following vote: Yeas 7, Nays 0; May 9, 2023, sent
 1-6 to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10			X	
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			
1-17	X			

1-18 A BILL TO BE ENTITLED
 1-19 AN ACT

1-20 relating to the administration of violations and administrative
 1-21 penalties of the employment of children.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Sections 51.033 and 51.034, Labor Code, are
 1-24 repealed.

1-25 SECTION 2. Subchapter D, Chapter 51, Labor Code, is amended
 1-26 by adding Sections 51.033 through 51.039 to read as follows:

1-27 Sec. 51.033. ADMINISTRATIVE PENALTY. (a) If a child labor
 1-28 investigator determines that a person who employs a child, or
 1-29 individual restricted by Section 51.016(b), has violated this
 1-30 chapter or a rule adopted under this chapter, the investigator may
 1-31 assess an administrative penalty against that person as provided by
 1-32 this subchapter.

1-33 (b) The penalty for a violation may be in an amount not to
 1-34 exceed \$10,000.

1-35 (c) The amount of the penalty shall be based on:

1-36 (1) the seriousness of the violation, including the
 1-37 nature, circumstances, extent, and gravity of any prohibited acts;

1-38 (2) the history of previous violations;

1-39 (3) the amount necessary to deter future violations;

1-40 (4) efforts to correct the violation; and

1-41 (5) any other matter that justice may require.

1-42 Sec. 51.034. PRELIMINARY DETERMINATION ORDER. (a) If,
 1-43 after examination of a possible violation and the facts relating to
 1-44 that possible violation, the child labor investigator determines
 1-45 that a violation has occurred, the child labor investigator shall
 1-46 issue a preliminary determination order to the person charged with
 1-47 the violation.

1-48 (b) The preliminary determination order shall state the
 1-49 facts on which the preliminary determination order is based, the
 1-50 occurrence of a violation, the fact that an administrative penalty
 1-51 is to be imposed, and the amount of the penalty.

1-52 (c) The preliminary determination order must inform the
 1-53 person that the person has a right to a hearing on the occurrence of
 1-54 the violation, the amount of the penalty, or both the occurrence of
 1-55 the violation and the amount of the penalty.

1-56 (d) The child labor investigator shall mail notice of the
 1-57 preliminary determination order to the person's last known address,
 1-58 as reflected by commission records.

1-59 Sec. 51.0341. ESTABLISHMENT OF CHILD LABOR APPEAL
 1-60 TRIBUNALS. (a) The commission shall establish one or more
 1-61 impartial child labor appeal tribunals to hear and decide disputed

2-1 preliminary determination orders if the commission determines that
 2-2 establishment of those tribunals is necessary to ensure prompt
 2-3 disposal of child labor cases on appeal.

2-4 (b) Each child labor appeal tribunal shall be composed of a
 2-5 salaried examiner appointed by the commission.

2-6 Sec. 51.0342. REDETERMINATION BY CHILD LABOR INVESTIGATOR.

2-7 (a) If the child labor investigator discovers an error in
 2-8 connection with a preliminary determination order or discovers
 2-9 additional information not previously available, the child labor
 2-10 investigator, within the period specified in Section 51.035, may
 2-11 reconsider and reissue the preliminary determination order. An
 2-12 investigator's reissued preliminary determination order voids and
 2-13 replaces the order requiring correction.

2-14 (b) A reissued preliminary determination order becomes
 2-15 final unless a party files an appeal from the reissued preliminary
 2-16 determination order within the period specified in Section 51.035.
 2-17 The period to request an appeal shall begin on the date the examiner
 2-18 mails the reissued preliminary determination order.

2-19 (c) Notwithstanding Subsection (a) of this section, if a
 2-20 child labor investigator mails a preliminary determination order to
 2-21 a person's incorrect address solely because of the child labor
 2-22 investigator's own error, the child labor investigator may reissue
 2-23 a preliminary determination order to the party's correct address at
 2-24 any time.

2-25 Sec. 51.035. REQUEST FOR HEARING ON PRELIMINARY ORDER. (a)
 2-26 A person may request a hearing before a child labor appeal tribunal
 2-27 to appeal a preliminary determination order made under Section
 2-28 51.034.

2-29 (b) The request for hearing must be made in writing not
 2-30 later than the 21st day after the date the child labor investigator
 2-31 mails the notice of the preliminary determination order.

2-32 Sec. 51.0351. PRELIMINARY ORDER FINAL IF HEARING NOT
 2-33 REQUESTED. If the person does not request a hearing to appeal a
 2-34 preliminary determination order within the period prescribed by
 2-35 Section 51.035, the order becomes the final order of the commission
 2-36 for all purposes, and the person is not entitled to judicial review
 2-37 of the order under this subchapter.

2-38 Sec. 51.0352. PAYMENT REQUIRED IF HEARING NOT REQUESTED. A
 2-39 person that does not request a hearing within the period prescribed
 2-40 by Section 51.035 to appeal a preliminary determination order shall
 2-41 pay the penalty amount ordered to the commission not later than the
 2-42 21st day after the date the commission mails notice of the order.

2-43 Sec. 51.0353. NOTICE; TIME FOR HEARING. (a) A notice
 2-44 regarding an administrative hearing conducted under this
 2-45 subchapter must be mailed by the child labor appeal tribunal not
 2-46 later than the 21st day after the date a request for the hearing is
 2-47 received by the commission.

2-48 (b) As soon as practicable, but not later than the 45th day
 2-49 after the date a notice is mailed under Subsection (a), the tribunal
 2-50 shall conduct the hearing.

2-51 Sec. 51.0354. HEARING PROCEDURES. (a) A hearing conducted
 2-52 under this subchapter is subject to the rules and hearings
 2-53 procedures used by the commission in the determination of a claim
 2-54 for unemployment compensation benefits.

2-55 (b) The hearing is not subject to Chapter 2001, Government
 2-56 Code.

2-57 Sec. 51.0355. CONSIDERATION OF PRELIMINARY DETERMINATION
 2-58 ORDER. The child labor appeal tribunal may modify, affirm, or
 2-59 rescind a preliminary determination order.

2-60 Sec. 51.0356. ORDER AFTER HEARING. After a hearing, the
 2-61 child labor appeal tribunal shall enter a written order for the
 2-62 payment of any penalty the child labor appeal tribunal assesses.

2-63 Sec. 51.036. NOTICE AND FINALITY OF ORDER. (a) The child
 2-64 labor appeal tribunal shall mail to each party to the appeal notice
 2-65 of:

- 2-66 (1) the decision;
 - 2-67 (2) the violation; and
 - 2-68 (3) the amount of any penalty assessed.
- 2-69 (b) The notice shall be mailed to a party's last known

3-1 address, as shown by commission records.

3-2 (c) The order of the child labor appeal tribunal becomes
 3-3 final 14 days after the date on which it is mailed unless reopened
 3-4 by the child labor tribunal or a party to the decision initiates a
 3-5 further appeal to the commission as provided by this subchapter.

3-6 Sec. 51.0361. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE
 3-7 CHILD LABOR APPEAL TRIBUNAL. (a) The commission by order may
 3-8 remove to itself or transfer to another child labor appeal tribunal
 3-9 the proceedings pending before a child labor appeal tribunal.

3-10 (b) The commission promptly shall mail to the parties to the
 3-11 proceedings a notice of the order under Subsection (a).

3-12 (c) A quorum of the commission shall hear a proceeding
 3-13 removed to the commission under Subsection (a).

3-14 Sec. 51.0362. COMMISSION REVIEW OF CHILD LABOR APPEAL
 3-15 TRIBUNAL ORDER. The commission may:

3-16 (1) on its own motion:

3-17 (A) affirm, modify, or set aside an order issued
 3-18 under Section 51.036 on the basis of the evidence previously
 3-19 submitted in the case; or

3-20 (B) direct the taking of additional evidence; or

3-21 (2) permit any of the parties affected by the order to
 3-22 initiate a further appeal before the commission.

3-23 Sec. 51.0363. NOTICE OF COMMISSION ACTION. (a) The
 3-24 commission shall mail to each party to the appeal under Section
 3-25 51.0362 notice of:

3-26 (1) the commission's decision;

3-27 (2) the violation;

3-28 (3) the amount of any penalty assessed; and

3-29 (4) the person's right to judicial review of the order.

3-30 (b) The notice shall be mailed to a party's last known
 3-31 address, as shown by commission records.

3-32 Sec. 51.0364. FINALITY OF COMMISSION ORDER. An order of the
 3-33 commission becomes final 14 days after the date the order is mailed
 3-34 unless before that date:

3-35 (1) the commission by order reopens the appeal; or

3-36 (2) a party to the appeal files a written motion for
 3-37 rehearing.

3-38 Sec. 51.037. JUDICIAL REVIEW. (a) A person who has
 3-39 exhausted the person's administrative remedies under this chapter,
 3-40 other than a motion for rehearing, may bring a suit to appeal the
 3-41 order.

3-42 (b) The suit must be filed not later than the 30th day after
 3-43 the date the final order is mailed.

3-44 (c) The commission must be made a defendant in the suit.

3-45 (d) The suit must be brought in the county of the person's
 3-46 residence. If the person is not a resident of this state, the suit
 3-47 must be brought in the county in this state in which the person has
 3-48 its principal place of business.

3-49 (e) Judicial review of the order of the commission is in the
 3-50 manner applied to an appeal from a final decision under Subtitle A,
 3-51 Title 4. The standard of review is under the substantial evidence
 3-52 rule.

3-53 (f) If the court sustains the occurrence of the violation,
 3-54 the court may uphold or reduce the amount of the penalty and order
 3-55 the person to pay the full or reduced amount of the penalty. If the
 3-56 court does not sustain the occurrence of the violation, the court
 3-57 shall order that a penalty is not owed.

3-58 Sec. 51.038. PAYMENT TO COMMISSION; ESCROW PENDING REVIEW.

3-59 (a) Not later than the 30th day after the date a commission order
 3-60 becomes final, the person required to pay a penalty shall:

3-61 (1) pay the amount to the commission; or

3-62 (2) if the person files a petition for judicial review
 3-63 in a court of competent jurisdiction contesting the final order,
 3-64 send the amount to the commission for deposit in an
 3-65 interest-bearing escrow account.

3-66 (b) When the judgment of the court becomes final, the court
 3-67 shall proceed under this subsection. If the person paid the amount
 3-68 of the penalty and if that amount is reduced or is not upheld by the
 3-69 court, the court shall order that the appropriate amount plus

4-1 accrued interest be remitted to the person. The rate of the
 4-2 interest is the rate charged on loans to depository institutions by
 4-3 the New York Federal Reserve Bank, and the interest shall be paid
 4-4 for the period beginning on the date the penalty was paid and ending
 4-5 on the date the penalty is remitted.

4-6 Sec. 51.0385. DEPOSIT OF PENALTY. A penalty collected
 4-7 under this section shall be remitted to the comptroller for deposit
 4-8 in the general revenue fund.

4-9 Sec. 51.039. INJUNCTION: ATTORNEY GENERAL'S ACTION. The
 4-10 attorney general may seek injunctive relief in district court
 4-11 against an employer who repeatedly violates the requirements
 4-12 established by this chapter relating to the employment of children.

4-13 SECTION 3. Section 301.0015, Labor Code, is amended to read
 4-14 as follows:

4-15 Sec. 301.0015. GUIDELINES REGARDING FUNCTIONS OF
 4-16 COMMISSION AND STAFF. (a) In administering its functions under
 4-17 this title or another law, the commission shall limit its
 4-18 activities to:

4-19 (1) setting commission policies, including policies
 4-20 that clearly separate the policymaking responsibilities of the
 4-21 commission and the management responsibilities of the executive
 4-22 director and commission staff;

4-23 (2) giving general direction to the executive director
 4-24 regarding the implementation of the commission's policies, and
 4-25 holding the executive director accountable for implementing the
 4-26 policies;

4-27 (3) approving the commission's budget recommendation
 4-28 to the legislature;

4-29 (4) reviewing under Subchapter D, Chapter 212, the
 4-30 decision of an appeal tribunal regarding unemployment
 4-31 compensation;

4-32 (5) reviewing under Subchapter D, Chapter 61, the
 4-33 decision of a wage claim appeal tribunal regarding a wage claim;

4-34 (6) adopting rules necessary to administer the
 4-35 commission's policies, including rules necessary for the
 4-36 administration of this title and rules governing required reports,
 4-37 procedures, and orders;

4-38 (7) responding to questions and comments that are
 4-39 directed to the commission by the executive director and that
 4-40 relate to setting or clarifying commission policies or relate to
 4-41 other matters of general interest to the commission; ~~and~~

4-42 (8) requesting information from commission staff; and

4-43 (9) reviewing under Subchapter D, Chapter 51, the
 4-44 decision of a child labor appeal tribunal regarding a child labor
 4-45 violation and/or an administrative penalty.

4-46 (b) Except as provided by Subsection (c), the commission may
 4-47 conduct the activities listed in Subsection (a) only when acting as
 4-48 a governmental body.

4-49 (c) The commission, acting as a governmental body, or an
 4-50 individual member of the commission may conduct the activities
 4-51 listed in Subsections (a)(7) and (8).

4-52 (d) In administering its functions under this title or
 4-53 another law, the commission, acting as a governmental body, or an
 4-54 individual member of the commission may not:

4-55 (1) direct the day-to-day operations of the executive
 4-56 director or other commission staff; or

4-57 (2) establish the details for the implementation of
 4-58 commission policies or direct the executive director or other
 4-59 commission staff about those details.

4-60 SECTION 4. Section 301.006, Labor Code, is amended to read
 4-61 as follows:

4-62 Sec. 301.006. CHAIR. (a) The governor shall designate the
 4-63 chair of the commission from among the members of the commission.
 4-64 The chair shall serve in that capacity at the pleasure of the
 4-65 governor for a two-year term. The governor may redesignate the same
 4-66 member to serve consecutive terms.

4-67 (b) Notwithstanding Subsection (a), the member of the
 4-68 commission who represents the public shall serve as chair:

4-69 (1) when the commission acts under:

- 5-1 (A) Chapter 21;
- 5-2 (B) Subchapter D, Chapter 61;
- 5-3 (C) Subchapter D, Chapter 212; [~~or~~]
- 5-4 (D) Chapter 301, Property Code; or
- 5-5 (E) Subchapter D, Chapter 51; and

5-6 (2) in commission hearings involving unemployment
5-7 insurance issues regarding tax coverage, contributions, or
5-8 reimbursements.

5-9 SECTION 5. The change in law made by this Act applies only
5-10 to a preliminary determination order issued on or after the
5-11 effective date of this Act. A preliminary determination order
5-12 issued before that date is governed by the law in effect on the date
5-13 that the preliminary determination order was issued, and the former
5-14 law is continued in effect for that purpose.

5-15 SECTION 6. This Act takes effect September 1, 2023.

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