

By: Christian

H.B. No. 2057

A BILL TO BE ENTITLED

AN ACT

relating to workers' compensation benefits for employees with multiple employment.

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

SECTION 1. Section 408.042, Labor Code, is amended to read as follows:

Sec. 408.042. AVERAGE WEEKLY WAGE FOR PART-TIME EMPLOYEE ~~[OR EMPLOYEE WITH MULTIPLE EMPLOYMENT]~~. (a) The average weekly wage of a part-time employee who limits the employee's work to less than full-time hours or a full-time workweek as a regular course of that employee's conduct is computed as provided by Section 408.041.

(b) For part-time employees not covered by Subsection (a), the average weekly wage:

(1) for determining temporary income benefits is computed as provided by Section 408.041; and

(2) for determining impairment income benefits, supplemental income benefits, lifetime income benefits, and death benefits is computed as follows:

(A) if the employee has worked for the employer for at least the 13 weeks immediately preceding the date of the injury, the average weekly wage is computed by dividing the sum of the wages paid in the 13 consecutive weeks immediately preceding the date of the injury by 13 and adjusting that amount to the weekly wage level the employee would have attained by working a full-time

1 workweek at the same rate of pay; or

2 (B) if the employee has worked for the employer
3 for less than 13 weeks immediately preceding the date of the injury,
4 the average weekly wage is equal to:

5 (i) the weekly wage that the employer pays a
6 similar employee for similar services in [~~based on a~~] full-time
7 employment [~~workweek~~]; or

8 (ii) if a similar employee does not exist,
9 the usual wage paid in that vicinity for the same or similar
10 services in [~~based on a~~] full-time employment [~~workweek~~].

11 (c) [~~For employees with multiple employment, the average~~
12 ~~weekly wage for determining temporary income benefits, impairment~~
13 ~~income benefits, supplemental income benefits, lifetime income~~
14 ~~benefits, and death benefits, is computed as follows:~~

15 [~~(1) the average weekly wage for an employee with~~
16 ~~multiple employment is equal to the sum of the average weekly wages~~
17 ~~computed under Subdivisions (2) and (3);~~

18 [~~(2) for each of the employers for whom the employee~~
19 ~~has worked for at least the 13 weeks immediately preceding the date~~
20 ~~of injury, the average weekly wage is equal to the sum of the wages~~
21 ~~paid by that employer to the employee in the 13 weeks immediately~~
22 ~~preceding the injury divided by 13;~~

23 [~~(3) for each of the employers for whom the employee~~
24 ~~has worked for less than the 13 weeks immediately preceding the date~~
25 ~~of the injury, the average weekly wage is equal to:~~

26 [~~(A) the weekly wage that employer pays similar~~
27 ~~employees for similar services; or~~

1 ~~[(B) if a similar employee does not exist, the~~
2 ~~usual weekly wage paid in that vicinity for the same or similar~~
3 ~~services; and~~

4 ~~[(4) the average weekly wage of an employee with~~
5 ~~multiple employment who limits the employee's work to less than a~~
6 ~~full-time workweek, but does not do so as a regular course of that~~
7 ~~employee's conduct, is adjusted to the weekly wage level the~~
8 ~~employee would have attained by working a full-time workweek at the~~
9 ~~employee's average rate of pay.~~

10 ~~[(d) The commission shall:~~

11 ~~[(1) prescribe a form to collect information regarding~~
12 ~~the wages of employees with multiple employment; and~~

13 ~~[(2) by rule, determine the manner by which the~~
14 ~~commission collects and distributes wage information to implement~~
15 ~~this section.~~

16 ~~[(c) For an employee with multiple employment, only the~~
17 ~~employee's wages that are reportable for federal income tax~~
18 ~~purposes may be considered. The employee shall document and verify~~
19 ~~wage payments subject to this section.~~

20 ~~[(f) If the commission determines that computing the~~
21 ~~average weekly wage for an employee as provided by Subsection (c) is~~
22 ~~impractical or unreasonable, the commission shall set the average~~
23 ~~weekly wage in a manner that more fairly reflects the employee's~~
24 ~~average weekly wage and that is fair and just to both parties or is~~
25 ~~in the manner agreed to by the parties. The commission by rule may~~
26 ~~define methods to determine a fair and just average weekly wage~~
27 ~~consistent with this section.~~

1 ~~[(g) An insurance carrier is entitled to apply for and~~
2 ~~receive reimbursement at least annually from the subsequent injury~~
3 ~~fund for the amount of income benefits paid to a worker under this~~
4 ~~section that are based on employment other than the employment~~
5 ~~during which the compensable injury occurred. The commission may~~
6 ~~adopt rules that govern the documentation, application process, and~~
7 ~~other administrative requirements necessary to implement this~~
8 ~~subsection.~~

9 ~~[(h)]~~ In this section "part-time [~~+~~

10 ~~[(1) "Employee with multiple employment" means an~~
11 ~~employee who has more than one employer.~~

12 ~~[(2) "Full-time workweek" means a 40-hour workweek.~~

13 ~~[(3) "Part-time] employee" means an employee who, at~~
14 ~~the time of the injury, was working less than the [a] full-time~~
15 ~~hours or full-time workweek of similar employees in the same~~
16 ~~employment, whether for the same or a different employer [for whom~~
17 ~~the employee was working when the compensable injury occurred].~~

18 SECTION 2. This Act takes effect September 1, 2003.