

BILL ANALYSIS

Senate Research Center

S.B. 695
By: Zaffirini
Natural Resources & Economic Development
5/24/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Part of the Texas Workforce Commission's (TWC) 2021 legislative agenda, S.B. 695 would allow the agency to serve notices of assessment on employers via certified mail and provide TWC access to courts for substituted service without payment of court fees. The legislature has given similar authority to the Comptroller of Public Accounts of the State of Texas for serving jeopardy determinations.

Under current law, TWC is responsible for enforcing employer violations of the Texas Unemployment Compensation Act. If an employer does not pay a required penalty or contribution after being notified, TWC may either bring a civil action against the employer or serve a notice of assessment on the employer. TWC is authorized to serve notices of assessment in the same manner as provided by the Texas Rules of Civil Procedure (TRCP). Under these rules, TWC is an "interested party" and therefore prohibited from serving any process itself, requiring the agency to hire a third-party process server. Not only does this lead to increased costs and delays, but it can even result in TWC being unable to serve notices at all, as is currently the case after TWC's only process server backed out of its contract in March 2020. To resolve this issue, TWC seeks statutory authority to serve notice of assessments via certified mail without a third party.

Finally, S.B. 695 would grant TWC access to the courts without a filing fee when service of process is unsuccessful via personal service or certified mail. If an employer attempts to evade service of process by personal service or mail, for example, the TRCP provides that a court may grant a substituted service method in such a case. A 2013 policy change at Travis County District Court, however, requires TWC to file suit and obtain a cause number to petition for substituted service. Currently, this would require an additional \$307 per assessment, which is cost-prohibitive. In each of the two years preceding this legislation, TWC petitioned for substituted service more than 300 times. This bill thus would provide TWC statutory access to Travis County District Court for substituted service without the payment of these filing fees.

In sum, S.B. 695 would allow TWC to effectively and efficiently pursue collections actions against employers who fail to meet their tax obligations under the law. A notice of assessment is attempted only after TWC has exhausted all other avenues of collections including the tax statement, default notices, pre-assessment notifications, tax liens, and tax levies.

S.B. 695 would simply clarify that TWC must attempt personal service or service by mail before attempting substituted service (by removing "one of the following methods" in the filed bill) and may attempt substituted service without utilizing the court system. It also would ensure that TWC can serve an employer by mail to the best address, rather than last known address, and make a minor change in the language to eliminate possible confusion.

S.B. 695 amends current law relating to the service of a notice of assessment by the Texas Workforce Commission under the Texas Unemployment Compensation Act.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 213.032(a), Labor Code, as follows:

(a) Requires that a notice of assessment be served on a defaulting employer:

(1) by personal delivery;

(2) by registered or certified mail, return receipt requested, or similar common carrier method to the employer's address as shown by Texas Workforce Commission records; or

(3) if an attempt to serve a notice of the assessment in a manner described by Subdivision (1) or (2) has been unsuccessful, in another manner that is reasonably calculated to give the employer notice of the assessment.

Deletes existing text requiring that a notice of assessment be served in the manner provided by law for service of process on a defendant in a civil action in district court.

SECTION 2. Effective date: September 1, 2021.