

BILL ANALYSIS

Senate Research Center

H.B. 2459
By: Vo (Alvarado)
Natural Resources & Economic Development
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Workforce Commission (TWC) is the state agency charged with the enforcement of child labor laws in Texas. The current administrative penalty process for violations of these laws has no avenue for child labor investigators to appeal if they do not agree with the TWC hearing officer's decision. Under the current process of issuing administrative penalties for these violations, when TWC assesses a violation and penalty, it issues a notice of preliminary determination to the employer that includes the amount of the penalty assessed. The employer to whom the penalty is assessed then has 21 days to file an appeal of the determination with TWC. If an appeal is filed, an appeal hearing is held with a TWC hearing officer and a decision is issued. If the employer still does not agree with TWC's decision, they may then file a motion for rehearing with TWC within 14 days or file suit against TWC and seek judicial review. Child labor investigators have a vested interest in any TWC decision but have no avenue for appeal if the investigators do not agree with the hearing officer's decision. H.B. 2459 seeks to provide these investigators with appeal rights and allow for an additional level of appeal to TWC for both parties.

H.B. 2459 amends current law relating to the administration of violations and administrative penalties of the employment of children.

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. Repealers: Sections 51.033 (Administrative Penalty) and 51.034 (Injunction: Attorney General's Action), Labor Code.

SECTION 2. Amends Subchapter D, Chapter 51, Labor Code, by adding Sections 51.033 through 51.039, as follows:

Sec. 51.033. ADMINISTRATIVE PENALTY. (a) Authorizes a child labor investigator, if the investigator determines that a person who employs a child, or individual restricted by Section 51.016(b) (relating to prohibiting a sexually oriented business from employing or entering into a contract, other than a contract described by a certain subsection, for the performance of work or the provision of a service with an individual younger than 21 years of age), has violated Chapter 51 (Employment of Children) or a rule adopted under this chapter, to assess an administrative penalty against that person as provided by Subchapter D (Penalty and Defense).

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

(c) Requires that the amount of the penalty 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) Requires the child labor investigator, if, after examination of a possible violation and the facts relating to that possible violation, the child labor investigator determines that a violation has occurred, to issue a preliminary determination order to the person charged with the violation.

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

(c) Requires that the preliminary determination order inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(d) Requires the child labor investigator to mail notice of the preliminary determination order to the person's last known address, as reflected by Texas Workforce Commission (TWC) records.

Sec. 51.0341. ESTABLISHMENT OF CHILD LABOR APPEAL TRIBUNALS. (a) Requires TWC to establish one or more impartial child labor appeal tribunals to hear and decide disputed preliminary determination orders if TWC determines that establishment of those tribunals is necessary to ensure prompt disposal of child labor cases on appeal.

(b) Requires that each child labor appeal tribunal be composed of a salaried examiner appointed by TWC.

Sec. 51.0342. REDETERMINATION BY CHILD LABOR INVESTIGATOR. (a) Authorizes the child labor investigator, if the child labor investigator discovers an error in connection with a preliminary determination order or discovers additional information not previously available, within the period specified in Section 51.035, to reconsider and reissue the preliminary determination order. Provides that an investigator's reissued preliminary determination order voids and replaces the order requiring correction.

(b) Provides that a reissued preliminary determination order becomes final unless a party files an appeal from the reissued preliminary determination order within the period specified in Section 51.035. Requires that the period to request an appeal begin on the date the examiner mails the reissued preliminary determination order.

(c) Authorizes the child labor investigator, notwithstanding Subsection (a) of this section, if a child labor investigator mails a preliminary determination order to a person's incorrect address solely because of the child labor investigator's own error, to reissue a preliminary determination order to the party's correct address at any time.

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

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

Sec. 51.0351. PRELIMINARY ORDER FINAL IF HEARING NOT REQUESTED. Provides that the order, if the person does not request a hearing to appeal a preliminary determination order within the period prescribed by Section 51.035, becomes the final order of TWC for all purposes, and the person is not entitled to judicial review of the order under this subchapter.

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

Sec. 51.0353. NOTICE; TIME FOR HEARING. (a) Requires that a notice regarding an administrative hearing conducted under this subchapter be mailed by the child labor appeal tribunal not later than the 21st day after the date a request for the hearing is received by TWC.

(b) Requires the tribunal, as soon as practicable, but not later than the 45th day after the date a notice is mailed under Subsection (a), to conduct the hearing.

Sec. 51.0354. HEARING PROCEDURES. (a) Provides that a hearing conducted under this subchapter is subject to the rules and hearings procedures used by TWC in the determination of a claim for unemployment compensation benefits.

(b) Provides that the hearing is not subject to Chapter 2001 (Administrative Procedure), Government Code.

Sec. 51.0355. CONSIDERATION OF PRELIMINARY DETERMINATION ORDER. Authorizes the child labor appeal tribunal to modify, affirm, or rescind a preliminary determination order.

Sec. 51.0356. ORDER AFTER HEARING. Requires the child labor appeal tribunal, after a hearing, to enter a written order for the payment of any penalty the child labor appeal tribunal assesses.

Sec. 51.036. NOTICE AND FINALITY OF ORDER. (a) Requires the child labor appeal tribunal to mail to each party to the appeal notice of the decision, the violation, and the amount of any penalty assessed.

(b) Requires that the notice be mailed to a party's last known address, as shown by TWC records.

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

Sec. 51.0361. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE CHILD LABOR APPEAL TRIBUNAL. (a) Authorizes TWC by order to remove to itself or transfer to another child labor appeal tribunal the proceedings pending before a child labor appeal tribunal.

(b) Requires TWC promptly to mail to the parties to the proceedings a notice of the order under Subsection (a).

(c) Requires a quorum of TWC to hear a proceeding removed to TWC under Subsection (a).

Sec. 51.0362. COMMISSION REVIEW OF CHILD LABOR APPEAL TRIBUNAL ORDER. Authorizes TWC to:

(1) on its own motion:

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

(B) direct the taking of additional evidence; or

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

Sec. 51.0363. NOTICE OF COMMISSION ACTION. (a) Requires TWC to mail to each party to the appeal under Section 51.0362 notice of TWC's decision, the violation, the amount of any penalty assessed, and the person's right to judicial review of the order.

(b) Requires that the notice be mailed to a party's last known address, as shown by TWC records.

Sec. 51.0364. FINALITY OF COMMISSION ORDER. Provides that an order of TWC becomes final 14 days after the date the order is mailed unless before that date TWC by order reopens the appeal or a party to the appeal files a written motion for rehearing.

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

(b) Requires that the suit be filed not later than the 30th day after the date the final order is mailed.

(c) Requires TWC to be made a defendant in the suit.

(d) Requires that the suit be brought in the county of the person's residence. Requires that the suit, if the person is not a resident of this state, be brought in the county in this state in which the person has its principal place of business.

(e) Provides that judicial review of the order of TWC is in the manner applied to an appeal from a final decision under Subtitle A (Employment Discrimination), Title 4. Provides that the standard of review is under the substantial evidence rule.

(f) Authorizes the court, if the court sustains the occurrence of the violation, to uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the occurrence of the violation, to order that a penalty is not owed.

Sec. 51.038. PAYMENT TO COMMISSION; ESCROW PENDING REVIEW. (a) Requires the person required to pay a penalty, not later than the 30th day after the date a TWC order becomes final, to:

(1) pay the amount to TWC; or

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

(b) Requires the court, when the judgment of the court becomes final, to proceed under this subsection. Requires the court, if the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, to order that the appropriate amount plus accrued interest be remitted to the person. Provides that the rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and that the interest is required to be

paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted.

Sec. 51.0385. DEPOSIT OF PENALTY. Requires that a penalty collected under this section be remitted to the Comptroller of Public Accounts of the State of Texas for deposit in the general revenue fund.

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

SECTION 3. Amends Section 301.0015, Labor Code, as follows:

Sec. 301.0015. GUIDELINES REGARDING FUNCTIONS OF COMMISSION AND STAFF. (a) Requires TWC, in administering its functions under Title 4 (Employment Services and Unemployment) or another law, to limit its activities to certain purposes, including reviewing under Subchapter D, Chapter 51, the decision of a child labor appeal tribunal regarding a child labor violation and/or an administrative penalty. Makes nonsubstantive changes.

(b)-(d) Makes no changes to these subsections.

SECTION 4. Amends Section 301.006, Labor Code, as follows:

Sec. 301.006. CHAIR. (a) Makes no changes to this subsection.

(b) Requires the member of TWC who represents the public, notwithstanding Subsection (a) (relating to requiring the governor to designate the chair of TWC from among the members of TWC), to serve as chair in certain circumstances, including when TWC acts under certain chapters and subchapters, including Subchapter D, Chapter 51.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2023.