

BILL ANALYSIS

H.B. 2459

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International Relations & Economic Development
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2459 amends the Labor Code to revise procedures for the assessment of administrative penalties for violations concerning the employment of children. The bill repeals existing provisions relating to such penalties and replaces them as described below.

Penalty Assessment

The repealed provisions authorized the Texas Workforce Commission (TWC) to assess an administrative penalty against a person who employs a child if TWC determines that person has violated laws or rules governing the employment of children. H.B. 2459 authorizes an administrative penalty to be assessed instead by a child labor investigator who makes such a determination and also subjects a sexually oriented business that employs an individual younger than 21 years of age in violation of state law to that penalty. The bill retains the \$10,000 penalty cap and the list of factors to be considered in determining the amount of the penalty.

Preliminary Determination Order

Whereas the repealed provisions provided for TWC's issuance of preliminary determinations regarding violations, H.B. 2459 provides for the issuance of preliminary determination orders by child labor investigators. The bill requires a child labor investigator to issue a preliminary determination order to the person charged with the violation if, after examination, the investigator determines that a violation occurred. The preliminary determination order must do the following:

- state the facts on which the preliminary determination order is based;
- state the occurrence of a violation;
- state the fact that an administrative penalty is to be imposed;
- state the amount of the penalty; and
- inform the person of the 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.

The bill requires the investigator to mail notice of the preliminary determination order to the person's last known address, as reflected by TWC records.

H.B. 2459 authorizes a child labor investigator to reconsider and reissue a preliminary determination order if the investigator discovers an error in connection with the order or discovers additional information not previously available, provided the order is reissued within the period specified for the person to request an appeal hearing. A reissued order voids and replaces the order requiring correction and becomes final unless a party files an appeal from the reissued order within the specified period. The period to request an appeal begins on the date the examiner mails the reissued order. The bill authorizes an investigator who mails a preliminary determination order to a person's incorrect address solely because of the investigator's own error to reissue the order to the party's correct address at any time.

Hearings

The repealed provisions established procedures for a person to request a hearing before TWC on the occurrence of a violation, the penalty amount, or both and procedures for TWC to hold such hearings. H.B. 2459, on the other hand, 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 and provides for hearings by these tribunals and for TWC's authority to review a tribunal's order. Each tribunal must be composed of a salaried examiner appointed by TWC.

H.B. 2459 authorizes a person to request a hearing before a child labor appeal tribunal to appeal a preliminary determination order. The request for hearing must be made in writing not later than the 21st day after the date the investigator mails the notice of the order. The preliminary determination order becomes the final order of TWC for all purposes, and the person is not entitled to judicial review of the order, if the person does not request an appeal hearing within the required period. The bill requires a person who does not request a hearing within the required period to pay the penalty amount ordered to TWC not later than the 21st day after the date TWC mails notice of the order.

H.B. 2459 requires a notice regarding an administrative hearing to 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. The tribunal must conduct the hearing as soon as practicable, but not later than the 45th day after the date the notice is mailed. The bill subjects the hearing to rules and hearings procedures used by TWC in the determination of a claim for unemployment compensation benefits. The hearing is not subject to the Administrative Procedure Act.

H.B. 2459 authorizes the child labor appeal tribunal to modify, affirm, or rescind a preliminary determination order. The bill requires the tribunal, after a hearing, to enter a written order for

the payment of any penalty the tribunal assesses. The bill requires the tribunal to mail to each party to the appeal, at their last known address, notice of the decision, the violation, and the amount of any penalty assessed. The order of the tribunal becomes final 14 days after the date on which it is mailed unless reopened by the tribunal or a party to the decision initiates a further appeal to TWC.

H.B. 2459 authorizes TWC by order to remove to itself or transfer to another tribunal the proceedings pending before a child labor appeal tribunal and requires TWC to mail a notice of the order to the parties to the proceedings. A quorum of TWC is required to hear a proceeding removed to TWC as such. With respect to TWC review of a tribunal order, the bill does the following:

- authorizes TWC to affirm, modify, or set aside an order by the tribunal on the basis of the evidence previously submitted in the case, direct the taking of additional evidence, or permit any of the parties affected by the order to initiate a further appeal before TWC;
- requires TWC to mail to each party to the appeal, at their last known address, notice of TWC's decision, the violation, the amount of any penalty assessed, and the right to judicial review; and
- establishes that an order of TWC becomes final 14 days after the date the order is mailed unless before that date TWC reopens the appeal by order or a party to the appeal files a written motion for rehearing.

Judicial Review

H.B. 2459 retains the right to judicial review of a TWC order but specifies that the authorization to bring a suit to appeal the order is for a person who exhausted administrative remedies under the bill's provisions, other than a motion for rehearing. The bill requires the suit to be filed not later than the 30th day after the date the final order is mailed and requires TWC to be made a defendant in the suit. The bill establishes that judicial review of such an order is in the manner applied to an appeal from a final decision under the Texas Unemployment Compensation Act and sets the venue for the suit as the county of the person's residence or, if the person is not a Texas resident, the Texas county in which the person has its principal place of business. The bill retains the specification from the repealed provisions that the standard of review is the substantial evidence rule and also retains provisions establishing the court's authority to uphold or reduce the amount of the penalty or order that a penalty is not owed, as applicable.

Payment of Penalty

H.B. 2459 requires a person who is subject to a penalty under a final TWC order to pay the amount to TWC or, if the person files a petition for judicial review, send the amount to TWC for deposit in an interest-bearing escrow account not later than the 30th day after the date the order becomes final. The bill does not retain the alternative to those actions provided by the repealed provisions that allows a person who files a petition for judicial review to stay enforcement of the penalty by paying the penalty amount to the court for placement in an escrow account or giving the court a supersedeas bond, or to request that the court stay enforcement by filing a sworn affidavit stating that the person is financially unable to pay the penalty or give the bond. Nor does the bill retain the authorization for TWC, in the event that a person does not pay the penalty, to refer the matter to the attorney general for collection and the authorization for the attorney general to bring a suit in a Travis County district court to enforce a final order from which an appeal has not been taken. However, the bill does retain provisions relating to the following:

- reimbursement of a person who paid a penalty that is reduced or not upheld by a court under judicial review; and
- remittance of collected penalties to the comptroller of public accounts for deposit in the general revenue fund.

Other Provisions

H.B. 2459 requires the member of TWC who represents the public to serve as chair of TWC when it acts under provisions relating to penalties for violations concerning employment of children.

H.B. 2459 applies only to a preliminary determination order issued on or after the bill's effective date.

H.B. 2459 repeals Sections 51.033 and 51.034, Labor Code.

EFFECTIVE DATE

September 1, 2023.