By:  Vo (Senate Sponsor - Alvarado) H.B. No. 2459

(In the Senate - Received from the House April 26, 2023; April 27, 2023, read first time and referred to Committee on Natural Resources & Economic Development; May 9, 2023, reported favorably by the following vote: Yeas 7, Nays 0; May 9, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Birdwell        X

Zaffirini                 X

Alvarado        X

Blanco          X

Hancock         X

Hughes          X

Kolkhorst                 X

Miles           X

Sparks          X

A BILL TO BE ENTITLED

AN ACT

relating to the administration of violations and administrative penalties of the employment of children.

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

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  Sections 51.033 and 51.034, Labor Code, are repealed.

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

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

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

(c)  The amount of the penalty shall 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) 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, the child labor investigator shall issue a preliminary determination order to the person charged with the violation.

(b)  The preliminary determination order shall 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)  The preliminary determination order must 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)  The child labor investigator shall mail notice of the preliminary determination order to the person's last known address, as reflected by commission records.

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

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

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

(b)  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. The period to request an appeal shall begin on the date the examiner mails the reissued preliminary determination order.

(c)  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, the child labor investigator may reissue a preliminary determination order to the party's correct address at any time.

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

(b)  The request for hearing must 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. If the person does not request a hearing to appeal a preliminary determination order within the period prescribed by Section 51.035, the order becomes the final order of the commission 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. A person that does not request a hearing within the period prescribed by Section 51.035 to appeal a preliminary determination order shall pay the penalty amount ordered to the commission not later than the 21st day after the date the commission mails notice of the order.

Sec. 51.0353.  NOTICE; TIME FOR HEARING. (a) A notice regarding an administrative hearing conducted under this subchapter must 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 the commission.

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

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

(b)  The hearing is not subject to Chapter 2001, Government Code.

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

Sec. 51.0356.  ORDER AFTER HEARING. After a hearing, the child labor appeal tribunal shall 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) The child labor appeal tribunal shall mail to each party to the appeal notice of:

(1)  the decision;

(2)  the violation; and

(3)  the amount of any penalty assessed.

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

(c)  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 the commission as provided by this subchapter.

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

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

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

Sec. 51.0362.  COMMISSION REVIEW OF CHILD LABOR APPEAL TRIBUNAL ORDER. The commission may:

(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 the commission.

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

(1)  the commission's decision;

(2)  the violation;

(3)  the amount of any penalty assessed; and

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

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

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

(1)  the commission by order reopens the appeal; or

(2)  a party to the appeal files a written motion for rehearing.

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

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

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

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

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

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

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

(1)  pay the amount to the commission; 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 the commission for deposit in an interest-bearing escrow account.

(b)  When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall 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. A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

Sec. 51.039.  INJUNCTION: ATTORNEY GENERAL'S ACTION. The attorney general may 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.  Section 301.0015, Labor Code, is amended to read as follows:

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

(1)  setting commission policies, including policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the executive director and commission staff;

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

(3)  approving the commission's budget recommendation to the legislature;

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

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

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

(7)  responding to questions and comments that are directed to the commission by the executive director and that relate to setting or clarifying commission policies or relate to other matters of general interest to the commission; [~~and~~]

(8)  requesting information from commission staff; and

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

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

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

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

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

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

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

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

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

(1)  when the commission acts under:

(A)  Chapter 21;

(B)  Subchapter D, Chapter 61;

(C)  Subchapter D, Chapter 212; [~~or~~]

(D)  Chapter 301, Property Code; or

(E)  Subchapter D, Chapter 51; and

(2)  in commission hearings involving unemployment insurance issues regarding tax coverage, contributions, or reimbursements.

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

SECTION 6.  This Act takes effect September 1, 2023.

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