

By: Bryant

H.B. No. 4394

A BILL TO BE ENTITLED

AN ACT

relating to increasing warehouse worker protections.

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

SECTION 1. Title 2, Labor Code, is amended by adding Subtitle F to read as follows:

SUBTITLE F. WORKER PROTECTIONS

CHAPTER 96. WAREHOUSE WORKER PROTECTIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 96.001. DEFINITIONS. In this chapter:

(1) "Adverse employment action" includes termination, demotion, unfavorable reassignment, failure to promote, disciplinary action, reduction in compensation, and constructive discharge.

(2) "Aggregated work speed data" means employee work speed data that an employer has combined or collected together in summary or other form such that the data cannot be identified with any individual.

(3) "Commission" means the Texas Workforce Commission.

(4) "Controlled group of corporations" means any group through which one or more chains of corporations are connected through stock ownership with a common parent corporation if:

(A) stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote

1 or at least 50 percent of the total value of shares of all classes of
2 stock of each of the corporations, except the common parent
3 corporation, is owned by one or more of the other corporations; and

4 (B) the common parent corporation owns stock
5 possessing at least 50 percent of the total combined voting power of
6 all classes of stock entitled to vote or at least 50 percent of the
7 total value of shares of all classes of stock of at least one of the
8 other corporations, excluding, in computing such voting power or
9 value, stock owned directly by such other corporations.

10 (5) "Defined time period" means any time interval
11 equal to or less than the duration of an employee's shift.

12 (6) "Employee" means an individual who is employed by
13 an employer for compensation. The term does not include an
14 independent contractor.

15 (7) "Employee work speed data" means information an
16 employer collects, stores, analyzes, or interprets relating to an
17 employee's performance of a quota, including quantities of tasks
18 performed, quantities of items or materials handled or produced,
19 rates or speeds of tasks performed, measurements or metrics of
20 employee performance in relation to a quota, and time categorized
21 as performing tasks or not performing tasks.

22 (8) "Employer":

23 (A) means a person who directly or indirectly, or
24 through an agent or any other person, including through the
25 services of a third-party employer, temporary services, or staffing
26 agency, independent contractor, or any similar entity, at any time
27 during the preceding 12 months, employs or exercises control over

1 the wages, hours, or working conditions of:

2 (i) 100 or more workers, including workers
3 employed by a member of a controlled group of corporations of which
4 the person is a member, at a single warehouse distribution center;
5 or

6 (ii) 500 or more workers, including workers
7 employed by a member of a controlled group of corporations of which
8 the person is a member, at one or more warehouse distribution
9 centers in this state; and

10 (B) includes any agent or other person, and any
11 member of, a controlled group of corporations of which a person
12 described by Paragraph (A) is a member.

13 (9) "Quota" means a work standard by which:

14 (A) an employee is assigned or required to
15 perform at a specified productivity speed or complete a quantified
16 number of tasks within a defined time period; or

17 (B) an employee's actions are categorized
18 between time performing tasks and not performing tasks and a
19 performance standard or recommendation is applied to the employee's
20 actions.

21 (10) "Warehouse distribution center" means an entity
22 described by any of the following North American Industry
23 Classification System (NAICS) codes as they exist on September 1,
24 2023:

25 (A) 493 for warehousing and storage;

26 (B) 423 for merchant wholesalers, durable goods;

27 (C) 424 for merchant wholesalers, nondurable

1 goods;

2 (D) 454110 for electronic shopping and
3 mail-order houses; or

4 (E) 492110 for couriers and express delivery
5 services.

6 Sec. 96.002. APPLICABILITY TO EMPLOYEES. This chapter
7 applies only to an employee who:

8 (1) works at a warehouse distribution center in a
9 non-administrative position; and

10 (2) is subject to a quota described by Section 96.051.

11 Sec. 96.003. RULES. The commission shall adopt rules as
12 necessary for the administration of this chapter.

13 SUBCHAPTER B. EMPLOYER REQUIREMENTS

14 Sec. 96.051. QUOTAS. (a) An employer shall provide to a
15 new employee, not later than the 30th day after the date the
16 employee is hired, a written description of:

17 (1) each quota to which the employee is subject,
18 including the number of tasks to be performed or materials to be
19 produced or handled within the defined time period; and

20 (2) any potential adverse employment action that could
21 result from failure to meet a quota described by Subdivision (1).

22 (b) For each change to a quota that occurs after the date an
23 employee was hired, the employer shall provide an updated written
24 description of each changed quota to which the employee is subject
25 not later than the second business day before the date the changed
26 quota takes effect.

27 (c) An employer shall provide an employee with notice of the

1 applicable quota for the employee before an employer takes an
2 adverse employment action against an employee in relation to the
3 employee's performance of a quota.

4 (d) An employee may not be required to meet a quota that
5 prevents compliance with meal or rest periods or use of bathroom
6 facilities required by law, including reasonable travel time to and
7 from bathroom facilities.

8 (e) An employer may not take adverse employment action
9 against an employee for failure to meet a quota that:

10 (1) does not allow an employee to comply with meal and
11 rest periods; or

12 (2) has not been disclosed to the employee under this
13 section.

14 (f) Paid and unpaid breaks may not be considered productive
15 time for the purpose of any quota or monitoring system unless the
16 employee is required to remain on call during the paid or unpaid
17 break.

18 Sec. 96.052. POSTING OF WORKPLACE NOTICE. An employer
19 shall post a public notice in the workplace informing employees of
20 their rights under this chapter, including:

21 (1) the amount of work in a prescribed time that
22 constitutes a permissible quota; and

23 (2) the right of an employee to:

24 (A) request quota and speed data information; and

25 (B) make a complaint to an applicable state

26 authority regarding a violation of an employee's rights under this
27 chapter.

1 Sec. 96.053. RECORDKEEPING. (a) An employer that uses
2 quotas or monitors work speed data shall maintain records of:

- 3 (1) the individual work speed data of each employee;
4 (2) the aggregated work speed data for similar
5 employees at the same establishment; and
6 (3) a written description of the quotas each employee
7 was provided under Section 96.051.

8 (b) The records described under Subsection (a) must be
9 maintained for the duration of the employee's employment.

10 (c) On an employee's separation from employment, the
11 employer shall retain the employer's records regarding the employee
12 for the six-month period preceding the date of the employee's
13 separation. The employer must retain the records for not less than
14 three years after the date of the employee's separation.

15 (d) An employer is not required to maintain records under
16 this section if the employer does not use quotas or monitor work
17 speed data.

18 Sec. 96.054. ACCESS TO RECORDS. (a) On request by the
19 commission, an employer shall provide a copy of the records
20 described by Section 96.053(a) to the commission.

21 (b) On request, a current employee of an employer is
22 entitled to receive from the employer:

- 23 (1) a written description of each quota to which the
24 employee is subject;
25 (2) a copy of the employee's work speed data; and
26 (3) a copy of the preceding six months of aggregated
27 work speed data for similar employees at the same workplace.

1 (c) Not later than the third anniversary of the date of an
2 employee's separation from employment with an employer, the former
3 employee is entitled to receive, on request:

4 (1) a written description of each quota to which the
5 employee was subject as of the date of the employee's separation;

6 (2) a copy of the employee's work speed data for the
7 six-month period preceding the date of the employee's separation
8 from employment; and

9 (3) a copy of aggregated work speed data for similar
10 employees at the same establishment for the six-month period
11 preceding the date of the employee's separation from employment.

12 (d) A record requested under this section must be provided
13 at no cost to the requestor.

14 (e) An employer shall provide access to a record requested
15 under this section not later than:

16 (1) for a written description of each quota to which an
17 employee was subject, the second business day after the date the
18 employer receives the request; and

19 (2) for all other records requested under this
20 section, the seventh business day after the date the employer
21 receives the request.

22 (f) This section does not require an employer to use quotas
23 or monitor work speed data. An employer that does not use quotas or
24 monitor work speed data is not required to maintain or provide the
25 records as described by this section.

26 SUBCHAPTER C. UNLAWFUL RETALIATION

27 Sec. 96.101. UNLAWFUL RETALIATION. (a) An employer may not

1 retaliate or otherwise take any adverse employment action against
2 an employee for exercising any right conferred by this chapter, or
3 for being perceived as exercising any right conferred by this
4 chapter, including for:

5 (1) making a request for information about a quota or
6 personal work speed data under Section 96.054; or

7 (2) making a complaint related to a quota or alleging a
8 violation of this chapter to the employer, the commission, or a
9 local, state, or federal governmental agency or official.

10 (b) For each adverse employment action taken against an
11 employee before the 90th day after the date the employee engages or
12 attempts to engage in an activity protected under this chapter,
13 there is a rebuttable presumption that the adverse employment
14 action violates this chapter. The presumption may be rebutted by
15 clear and convincing evidence that:

16 (1) the adverse employment action was taken for other
17 permissible reasons; and

18 (2) the engaging or attempting to engage in an
19 activity protected by this chapter was not a motivating factor in
20 the adverse employment action.

21 SUBCHAPTER D. ENFORCEMENT

22 Sec. 96.151. WORKPLACE INSPECTION BY COMMISSION; REFERRAL
23 TO ATTORNEY GENERAL. (a) The commission shall investigate an
24 employer for a violation of this chapter if the employer's worksite
25 is found to have an annual employee injury rate of at least one and
26 one-half times the warehousing industry's average annual injury or
27 fatality rate as published by the Bureau of Labor Statistics' most

1 recent Occupational Injuries and Illnesses and Fatal Injuries
2 database.

3 (b) Following an inspection under Subsection (a), the
4 commission may refer the matter to the attorney general for
5 enforcement if the commission has reason to believe that the
6 employer has violated this chapter.

7 Sec. 96.152. ATTORNEY GENERAL ACTION. The attorney general
8 may bring a civil action against an employer for a violation of this
9 chapter.

10 Sec. 96.153. PRIVATE RIGHT OF ACTION. (a) A current or
11 former employee or a representative of a current or former employee
12 may bring an action for injunctive relief to obtain compliance with
13 this chapter and may, on prevailing in the action, recover costs and
14 reasonable attorney's fees in the action.

15 (b) In an action involving a quota imposed by an employer
16 that prevented compliance with any applicable law or regulation
17 relating to workplace safety, employee health, or meal or rest
18 break requirements, injunctive relief shall be limited to:

19 (1) suspension of the quota; and

20 (2) compensatory damages in the form of restitution to
21 address any retaliation or other adverse employment action taken by
22 the employer in relation to the complaint or its enforcement.

23 (c) In an action involving retaliation in violation of this
24 chapter, a prevailing current or former employee or a
25 representative of a current or former employee may be awarded
26 exemplary damages equal to the greater of \$10,000 or three times the
27 amount of any compensatory damages, including for unpaid wages and

1 employment benefits. Damages awarded under this subsection are in
2 addition to injunctive relief.

3 SECTION 2. As soon as practicable after the effective date
4 of this Act, the Texas Workforce Commission shall adopt rules
5 necessary to implement Subtitle F, Title 2, Labor Code, as added by
6 this Act.

7 SECTION 3. The change in law made by this Act applies only
8 to a cause of action that accrues on or after the effective date of
9 this Act.

10 SECTION 4. This Act takes effect September 1, 2023.