

## **BILL ANALYSIS**

C.S.H.B. 4039  
By: Oliveira  
Business & Industry  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties note that certain workers' compensation enforcement matters revolve around technical errors and that time and resources could be saved if the commissioner of workers' compensation were required to consider additional factors in assessing an administrative penalty. C.S.H.B. 4039 seeks to require the commissioner to consider additional relevant facts and impacts when considering the assessment of an administrative penalty.

### **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 rulemaking authority is expressly granted to the commissioner of workers' compensation in SECTION 1 of this bill.

### **ANALYSIS**

C.S.H.B. 4039 amends the Labor Code to require the commissioner of workers' compensation in assessing an administrative penalty under the Texas Workers' Compensation Act to consider whether the administrative violation has negative impact on the delivery of benefits to an injured employee and to consider the history of compliance with electronic data interchange requirements in addition to other existing factors. The bill requires the commissioner to adopt rules that require the workers' compensation division of the Texas Department of Insurance, in the assessment of an administrative penalty against a person, to communicate to the person information about the penalty, including the relevant statute or rule violated, the conduct that gave rise to the violation, and the factors considered in determining the penalty.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 4039 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### **INTRODUCED**

SECTION 1. Labor Code Section 415.021,

#### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Section 415.021, Labor Code,

85R 28743

17.125.556

Substitute Document Number: 85R 22495

subsections (c) and (d) are amended to read as follows and the following subsections are renumbered accordingly:

- (c) In assessing an administrative penalty:
- (1) the commissioner shall consider:
    - (A) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
    - (B) the history and extent of previous administrative violations;
    - (C) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
    - (D) the penalty necessary to deter future violations; and

*(See Sec. 415.021(c)(2)(B) below.)*

- (E) other matters that justice may require; and
- (2) the commissioner shall,
  - (A) to the extent reasonable, consider the economic benefit resulting from the prohibited act;

(B) consider whether the administrative violation has negative impact on the delivery of benefits to an injured worker; and

(C) refrain from assessing administrative penalties solely for failure to comply with electronic data interchange requirements after good faith efforts to comply.

(d) The commissioner shall specifically enumerate the relevant statute or rule, the conduct that gives rise to the alleged violation, and how any penalties assessed by the division were determined.

(d)(e) A penalty may be assessed only after the person charged with an administrative violation has been given an opportunity for a hearing under Subchapter C.

is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

- (c) In assessing an administrative penalty:
- (1) the commissioner shall consider:
    - (A) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
    - (B) the history and extent of previous administrative violations;
    - (C) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
    - (D) the penalty necessary to deter future violations; ~~and~~

(E) whether the administrative violation has negative impact on the delivery of benefits to an injured employee;

(F) the history of compliance with electronic data interchange requirements; and

- (G) other matters that justice may require; and
- (2) the commissioner shall, to the extent reasonable, consider the economic benefit resulting from the prohibited act.

*(See Sec. 415.021(c)(1)(E) above.)*

(c-1) The commissioner shall adopt rules that require the division, in the assessment of an administrative penalty against a person, to communicate to the person information about the penalty, including:

- (1) the relevant statute or rule violated;
- (2) the conduct that gave rise to the violation; and
- (3) the factors considered in determining the penalty.

No equivalent provision.

No equivalent provision.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 2. Section 415.021(c), Labor Code, as amended by this Act, applies only to an administrative violation that occurs on or after the effective date of this Act.

SECTION 3. The commissioner of workers' compensation shall adopt rules under Section 415.021(c-1), Labor Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 4. This Act takes effect September 1, 2017.