

SUBJECT: Investigation and penalties regarding the employment of children

COMMITTEE: Economic Development — favorable, with amendments

VOTE: 6 ayes — Oliveira, Davis, Luna, Moffat, Shields, Solomons

0 nays

3 absent — Yarbrough, Raymond, Van de Putte

WITNESSES: For — Ted B. Roberts, Texas Association of Business Chambers of Commerce; Walter Hinojosa, Texas AFL-CIO

Against — None

On — C. Ed Davis, Texas Employment Commission

BACKGROUND: In 1993 the 73rd Legislature enacted SB 939, providing penalties for employers of illegal child labor, but did not incorporate the law into the recodified Labor Code. In general, SB 939 provides that if an employer violates the child labor laws, the Texas Employment Commission (TEC) may assess an administrative penalty of up to \$10,000 after a hearing and judicial review, if either is requested. The attorney general may bring suit in Travis County district court to enforce a final order.

DIGEST: HB 1028, as amended, would amend Labor Code sec. 51.021(a) to allow the Texas Employment Commission (TEC) to inspect a place of employment and collect information regarding a child who had been employed within the previous two years, not just currently employed.

The bill also would incorporate into the Labor Code the provisions of SB 939, 73rd Legislature, and make the following changes:

- allow the employer to request a hearing 21 days rather than 20 days after receiving notice of violation and penalty;
- require the TEC to set a hearing within 21 days after request and conduct the hearing within 45 days of the mailing of the hearing notice, rather than

conducting the hearing under the rules of the Texas Unemployment Compensation Act (TUCA);

- require judicial review as provided by Labor Code Subchapter E, Chapter 212, rather than as set forth in TUCA (both require a trial *de novo*; and
- delete a provision allowing the attorney general to seek injunction against repeated violators.

TEC would be authorized to require reports, conduct investigations and take any other action necessary to implement the chapter, including taking depositions and issuing subpoenas to witnesses within 100 miles of the relevant event. The TEC would pay the fee of the sheriff or constable for serving the subpoena. A county court or district court could order a subpoenaed person within its jurisdiction to give testimony or produce evidence and could hold that person in contempt for failure to do so. In addition, failure to obey a subpoena without just cause would be punishable by a fine of not less than \$200 and/or confinement not to exceed 60 days, with each day of failure to obey counted as a separate offense.

HB 1028 would provide for the collection of penalties with regard to child labor violations. If a person was delinquent in the payment of any amount due, including penalties, the TEC could notify, personally or by mail, anyone who possesses or controls an asset of the delinquent person.

Persons who received the notice would within 20 days have to report to the TEC what assets they possess of, or what debts they owe to, the delinquent person. Any reported assets would be frozen for 60 days. A notice against a bank would be effective if delivered or mailed to the principal or any branch office. A person who disposed of a frozen asset would be liable to the TEC for the delinquent amount owed if equal to or less than the value of the frozen asset. If requested by levy notice within the 60 day period, a person possessing the asset would transfer the asset to the TEC protected from liability.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

HB 1028 would give the TEC the investigative and penalty power necessary for effective enforcement of the Texas child labor law. Current law allows the TEC to inspect premises or collect information only if good reason exists to believe a child is currently illegally employed. TEC investigations have been thwarted by employers who fired an illegally employed child upon learning of a TEC investigation. This bill would allow the TEC to investigate cases in which the child had been employed in the two previous years.

It is unclear whether a person who previously employed a child is in violation of the laws. Even if the answer is no, investigative power into the past employment of children would allow TEC to put an employer on notice that if any previous violations are found, future questionable employment would be investigated vigorously. In addition, investigations of possible past violations often turn up evidence of present violations. Evidence of a past violation might also be used to augment penalties.

The Texas child labor law prohibits, with certain exceptions, employing a child under 14 years of age, limits the number of hours and hours of the day 14- and 15-year-olds can work and restricts children from working in certain hazardous occupations. To effectively investigate potentially illegal behavior of this sort, the TEC would need, and now assumes, the enforceable deposition and subpoena powers included in HB 1028. The bill would simply codify the TEC investigative powers and reasonably allow TEC to seize assets of those who are fined and fail to pay on time.

Granting power to the TEC to take depositions, issue subpoenas and levy property would make the agency's powers similar to those used to investigate and collect penalties for violations of the Payday Laws, which protect workers from employers that fail to pay them their wages in a timely manner. This bill would provide ease of administration for the TEC and a consistent basis of expectation for employers with regard to the powers of the TEC.

**OPPONENTS
SAY:**

No apparent opposition

NOTES:

A committee amendment would provide that the TEC could only inspect a place of employment or collect information with good reason to believe a child had been employed there within the last two years, rather than allowing inspection or collection of information if a child had ever been employed there. Another committee amendment would limit the subpoena power of the TEC to witnesses within 100 miles of the relevant event.

SB 959 by Harris and HB 2125 by Saunders, which would incorporate laws omitted from various codes last session, would also include the child labor law penalties in the Labor Code.