

BILL ANALYSIS

C.S.H.B. 94
By: González, Mary
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent reports show that certain Texas employees lose more than \$100 million annually to wage theft. Interested parties contend that this loss not only damages the economic livelihood of employees, but also penalizes businesses that operate in good faith because the businesses that pay due wages may be left at a competitive disadvantage due to higher operating costs. C.S.H.B. 94 seeks to address this issue by increasing transparency on wage theft in Texas.

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 Texas Workforce Commission in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 94 amends the Labor Code to require the Texas Workforce Commission (TWC) to make available on its website a publicly accessible list of all employers in Texas that have been assessed an administrative penalty under a statutory provision relating to an employer acting in bad faith in not paying wages, that have been ordered to pay wages by a final order of the TWC and have failed to comply with a statutory requirement to pay the amount or send the amount to the TWC for deposit in an escrow account pending judicial review, or that have been convicted of an offense of failure to pay wages or an offense of theft of service if the offense involved the theft of a service rendered by an employee of the employer. The bill requires the TWC to establish the database regarding wage theft not later than December 1, 2015.

C.S.H.B. 94 requires the database, for an employer that is a business entity, to include the name under which the entity operates and the name of each individual who is an owner of the entity and actively involved in the management of the entity. The bill requires the TWC to provide notice to an employer not later than the 180th day before the date the employer is listed in the database. The bill requires the TWC by rule to establish a process by which an employer may dispute the employer's inclusion in the database at any time after receiving such notice. The bill requires the process to require the TWC to investigate and make a final determination regarding such an employer dispute not later than the 21st day after the date the dispute is filed. The bill requires the TWC to list an employer in the database until the third anniversary of the date the penalty is assessed or the employer is convicted.

C.S.H.B. 94 requires an attorney representing the state to report to the TWC the name of each employer that is prosecuted and convicted in the attorney's jurisdiction of the offense of failure to pay wages or the offense of theft of service if the offense involved the theft of a service

rendered by an employee of the employer. The bill specifies that, for purposes of the bill's provisions, a person has been convicted of an offense if the person was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision. The bill does not impose any additional requirement on a contractor performing work under a contract that is subject to Government Code provisions establishing the right of a worker employed on a public work by or on behalf of the state or a political subdivision of the state to be paid prevailing wage rates or the Davis-Bacon Act or another federal law that makes the Davis-Bacon Act applicable to the contract.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 94 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. Subchapter D, Chapter 301, Labor Code, is amended by adding Section 301.070 to read as follows:

Sec. 301.070. DATABASE REGARDING WAGE THEFT. (a) In this section:

(1) "Attorney representing the state" means a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney.

(2) "Employee" and "employer" have the meanings assigned by Section 61.001.

(b) The commission shall make available on its Internet website a publicly accessible list of all employers in this state that have been:

(1) assessed an administrative penalty under Section 61.053;

(2) ordered to pay wages by a final order of the commission and have failed to comply with Section 61.063; or

(3) convicted of an offense under:

(A) Section 61.019; or

(B) Section 31.04, Penal Code, if the offense involved the theft of a service that was rendered by an employee of the employer.

(c) For an employer that is a business entity, the database must include the name under which the entity operates and the name of each individual who is an owner of the entity.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter D, Chapter 301, Labor Code, is amended by adding Section 301.070 to read as follows:

Sec. 301.070. DATABASE REGARDING WAGE THEFT. (a) In this section:

(1) "Attorney representing the state" means a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney.

(2) "Employee" and "employer" have the meanings assigned by Section 61.001.

(b) The commission shall make available on its Internet website a publicly accessible list of all employers in this state that have been:

(1) assessed an administrative penalty under Section 61.053;

(2) ordered to pay wages by a final order of the commission and have failed to comply with Section 61.063; or

(3) convicted of an offense under:

(A) Section 61.019; or

(B) Section 31.04, Penal Code, if the offense involved the theft of a service that was rendered by an employee of the employer.

(c) For an employer that is a business entity, the database must include the name under which the entity operates and the name of each individual who is an owner of the entity and actively involved in the management of the entity.

(d) The commission must provide notice to an employer not later than the 60th day before the date the employer is listed in the database.

(e) The commission by rule shall establish a process by which an employer may, at any time after receiving notice under Subsection (d), dispute the employer's inclusion in the database. The process must require the commission to investigate and make a final determination regarding an employer dispute under this subsection not later than the 21st day after the date the dispute is filed.

(f) The commission shall list an employer in the database until the third anniversary of the date the penalty is assessed or the employer is convicted.

(g) An attorney representing the state shall report to the commission the name of each employer that is prosecuted and convicted in the attorney's jurisdiction of an offense described by Subsection (b)(3).

(h) For purposes of this section, a person has been convicted of an offense if the person was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision.

(d) The commission must provide notice to an employer not later than the 180th day before the date the employer is listed in the database.

(e) The commission by rule shall establish a process by which an employer may, at any time after receiving notice under Subsection (d), dispute the employer's inclusion in the database. The process must require the commission to investigate and make a final determination regarding an employer dispute under this subsection not later than the 21st day after the date the dispute is filed.

(f) The commission shall list an employer in the database until the third anniversary of the date the penalty is assessed or the employer is convicted.

(g) An attorney representing the state shall report to the commission the name of each employer that is prosecuted and convicted in the attorney's jurisdiction of an offense described by Subsection (b)(3).

(h) For purposes of this section, a person has been convicted of an offense if the person was adjudged guilty of the offense or entered a plea of guilty or nolo contendere in return for a grant of deferred adjudication, regardless of whether the sentence for the offense was ever imposed or whether the sentence was probated and the person was subsequently discharged from community supervision.

(i) This section does not impose any additional requirement on a contractor performing work under a contract that is subject to:

(1) Chapter 2258, Government Code; or
(2) the Davis-Bacon Act (40 U.S.C. Section 3141 et seq.) or another federal law that makes the Davis-Bacon Act applicable to the contract.

SECTION 2. (a) The change in law made by this Act applies only to an administrative penalty assessed on or after the effective date of this Act. An administrative penalty assessed before the effective date of this Act is governed by the law in effect on the date the penalty was assessed, and the former law is continued in effect for that purpose.

(b) The change in law made by this Act applies only to a criminal proceeding that commences on or after the effective date of

SECTION 2. Same as introduced version.

this Act. A criminal proceeding that commences before the effective date of this Act is governed by the law in effect on the date the proceeding commenced, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act applies only to a final order of the Texas Workforce Commission entered on or after the effective date of this Act. A final order entered before the effective date of this Act is governed by the law in effect on the date the order was entered, and the former law is continued in effect for that purpose.

SECTION 3. Not later than December 1, 2015, the Texas Workforce Commission shall establish the database required by Section 301.070, Labor Code, as added by this Act.

SECTION 4. This Act takes effect September 1, 2015.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.