HOUSE
RESEARCH
ORGANIZATION bill analysis 4/14/2011

HB 1050
Woolley, Christian

SUBJECT: Defining "last work" in relation to initial unemployment insurance claims

COMMITTEE: Economic and Small Business Development — favorable, without amendment

VOTE: 6 ayes — J. Davis, Vo, R. Anderson, Miles, Murphy, Sheets

0 nays

1 absent — Reynolds

WITNESSES: For — (*Registered, but did not testify*: Kathy Barber, National Federation of Independent Business; Cathy Dewitt, Texas Association of Business; Monty Wynn, Texas Municipal League)

Against — None

On — Steve Riley, Texas Workforce Commission

BACKGROUND: Labor Code, Title 4, Subtitle A is the Texas Unemployment Compensation Act (TUCA), which establishes the state's unemployment insurance (UI) system in statute. Labor Code, ch. 208 addresses the filing of claims for UI benefits.

DIGEST: HB 1050 would amend Labor Code, sec. 208.002 to define "last work" and "person for whom the claimant last worked" for use in connection with an initial UI benefits claim. Under the bill, the "person for whom the claimant last worked" would be the last person for whom the claimant worked that met the TUCA definition of an employer or the last person for whom the claimant worked at least 30 hours during a week.

The bill would take effect September 1, 2011, and would apply only to claims for unemployment insurance benefits filed on or after that date.

SUPPORTERS SAY: HB 1050 would close an eligibility loophole in the unemployment insurance system that currently allows individuals to circumvent disqualification and collect UI benefits at the expense of their prior employers or the UI Trust Fund. Under current law, an employee who is fired can maintain eligibility for unemployment benefits by assuming an

informal, temporary job for a short time, often with a neighbor, relative, friend, or other individual not liable for UI taxes under the TUCA. Once the short-term job ends, the person applies for benefits that are paid by the last employer who paid unemployment taxes, frequently the employer that fired that person. HB 1050 would add a reasonable and enforceable provision to define "last work" that would close this loophole and effectively end this deceptive practice. According to a 2003 TWC survey, eight other states have incorporated provisions similar to those in HB 1050 into their UI statutes to address this issue, and another 27 states have incorporated some other form of temporary and casual-labor exclusions from the "last employer" determination.

The Texas Workforce Commission (TWC) estimates that implementing HB 1050 would stop 3,400 fraudulent claimants per year, saving the UI Trust Fund an estimated $18 million in fiscal 2012 and another $17 million in each of the subsequent four years, for a total potential five-year savings of $84.6 million. By eliminating these illegitimate claims, the bill would reduce the benefit charges and UI tax rates employers would pay.

HB 1050 would strike the right balance between targeting fraud and supporting deserving UI claimants by requiring one of two provisions defining "last work" to be met. There are legitimate employers, such as churches and non-profits, who would not be registered as employers with TWC and would not report wages for UI purposes but could have employees working at least 30 hours per week. Similarly, an individual could work full time for a new employer for four to five weeks at minimum wage before the employer had paid $1,500 in earnings during the quarter, thus becoming a “liable employer” for UI purposes. Such employees would not qualify for benefits when laid off if both “last work” provisions had to be met. HB 1050 would appropriately balance eligibility flexibility and program integrity safeguards.

OPPONENTS SAY:

HB 1050 would prevent deserving unemployed Texans from receiving the UI benefits they had earned. The state's unemployment insurance system already presents so many obstacles that Texas ranks 48th in the country for the percentage of unemployed job-seekers claiming UI benefits, according the U.S. Department of Labor. The bill would deny benefits to a laid-off Texan who had worked for a legitimate employer that did not have to report wages for UI purposes, such as a church or non-profit, if that individual had worked fewer than 30 hours per week. TWC already has strict penalties for fraud in place. The state should be looking for ways to

ensure the deserving unemployed receive the UI benefits for which their employers have already paid taxes, rather than focusing on measures that would only worsen our shamefully low 20 percent recipiency rate.

The extent of fraud in the unemployment system and the fiscal benefits of the bill may be overstated. Although TWC has stated the bill would result in large savings to the UI Trust Fund and reduced employer taxes, the fiscal note reports there would be no significant fiscal implication to the state and no impact on the state UI tax rate.

OTHER OPPONENTS SAY:

HB 1050 would be even more effective in reducing fraudulent claims if both of its provisions defining "person for whom the claimant last worked" were required, rather than just one or the other, so that the claimed employer had to meet the TUCA definition of employer and the claimant had to have worked at least 30 hours during a week for that employer.

NOTES:

The companion bill, SB 458 by Seliger, passed the Senate by 31-0 on the Local and Uncontested Calendar on March 24 and was reported favorably, without amendment, by the House Economic and Small Business Development Committee on April 12.

In 2009, HB 1348 by Christian and SB 859 by Seliger were identical to this session's HB 1050. HB 1348 died in the House Calendars Committee, and SB 859 passed the Senate but died in the House.