BILL ANALYSIS

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Wage theft not only damages employees, but it also penalizes businesses that operate in good faith. Honest businesses are unable to compete with those who have lower operating costs because they do not pay their workers their earned wages. One in five construction workers in Texas has suffered wage theft, and 71 percent of those workers who experienced wage theft report that they are unable to meet the basic needs of their families.

The database would include publicly available information on businesses that have been found guilty under the Penal Code and Labor Code and those that have been through the wage claims process with the Texas Workforce Commission and were referred to the collections department. The database increases transparency between businesses, employees, and consumers by allowing workers and consumers to make educated decisions about who they choose as their employer or contractor.

The Workers Defense Project supports the bill. There is no known opposition other than bad actors.

As proposed, S.B. 462 amends current law relating to a database of employers penalized for failure to pay wages or convicted of certain offenses involving wage theft.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 1 (Section 301.070, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 301, Labor Code, by adding Section 301.070, as follows:

> Sec. 301.070. DATABASE REGARDING WAGE THEFT. (a) Defines "attorney representing the state," "employee," and "employer."

> > (b) Requires the Texas Workforce Commission (TWC) to 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 (Bad Faith; Administrative Penalty);

> > > (2) ordered to pay wages by a final order of TWC and failed to comply with Section 61.063 (Payment to Commission; Escrow Pending Review; Waiver); or

> > > (3) convicted of an offense under Section 61.019 (Failure to Pay Wages; Criminal Penalty), Labor Code, or certain acts under Section 31.04 (Theft of Service), Penal Code.

(c) 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.

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

(e) Requires TWC to establish, by rule, a process by which an employer may, at the time after receiving notice, dispute the employer's inclusion in the database. Requires that the process require TWC to investigate and make a final determination regarding an employer dispute not later than the 21st day after the date the dispute is filed.

(f) Requires TWC to list an employer in the database until the third anniversary of the date the penalty is assessed or the employer is convicted.

(g) Requires an attorney representing the state to report to TWC the name of each employer that is prosecuted and convicted of a described offense within the attorney's jurisdiction.

(h) Provides that, 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 community supervision, 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) Provides that this section does not impose any additional requirement on a contractor performing work under a contract subject to Chapter 2258 (Prevailing Wage Rates), Government Code, or the Davis-Bacon Act, or another federal law that makes the Davis-Bacon Act (40 U.S.C. Section 3141 etseq.), applicable to the contract.

SECTION 2. (a) Makes application of this Act, in regards to administrative penalties, prospective.

(b) Makes application of this Act, in regards to criminal proceedings, prospective.

(c) Makes application of this Act, in regards to a final order of TWC, prospective.

SECTION 3. Requires TWC, not later than December 1, 2017, to establish the database required by Section 301.070, Labor Code, as added by this Act.

SECTION 4. Effective date: September 1, 2017.