

CHAPTER 456

S.B. No. 418

AN ACT

relating to the enforcement of certain employee claims for payment of wages.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivision (2), Section 1, Article 5155, Revised Statutes, is amended to read as follows:

(2) "Employer" means a person that employs one or more employees *and any other person that acts directly or indirectly in the interests of an employer in relation to an employee.* The term does not include the federal government, this state, or a political subdivision of the state.

SECTION 2. Subsections (e), (g), (h), and (j), Section 5, Article 5155, Revised Statutes, are amended to read as follows:

(e) An employer who does not request a hearing in a timely manner to contest a preliminary wage determination order shall pay the amounts ordered to the commission not later than the 21st day after the date of mailing of the commission notice. *The payment must equal the net amount of outstanding wages after any valid deductions and must include an itemized list of the deductions.* Payment to the commission constitutes payment to the employee for all purposes.

(g) If it is determined after hearing by the commission that wages are due or a penalty may be assessed, the commission shall enter a written order to that effect. The commission shall notify the parties in writing of the decision, the amount of wages subject to the order, the amount of any penalty assessed, and the parties' right to judicial review of the commission's order. The commission shall mail the notice to each party at that party's last known address, as reflected by commission records. The order of the commission shall become final 14 days after the mailing thereof, unless, within the 14 days, the hearing is reopened by commission order or a party to the appeal files a written motion for rehearing. A party may bring an action in a court of competent jurisdiction to appeal the final order, if the party has exhausted the party's administrative remedies under this article. The action must be filed not later than the 30th [60th] day after the date the final order is mailed. In the action, the commission and any other party to the proceeding before the commission shall be made defendants. The action shall be brought in the county of the claimant's residence, provided that if the claimant is a nonresident of the State of Texas the action shall be brought in the county in Texas in which the employer has his principal place of business. An appeal under this section is governed by the trial de novo with substantial evidence standard of review as applied to an appeal from a final decision under the Texas Unemployment Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes).

(h) Not later than the 30th [60th] day after the date the commission's order is final, the party required to pay wages or assessed a penalty shall either remit the amount in question to the commission or, if the party files a petition for judicial review in a court of competent jurisdiction contesting the final order, forward all amounts assessed to the commission for deposit in escrow in an interest-bearing account. Unless the person files an affidavit of inability to pay with the clerk of the court within the specified period, failure to forward the amounts within the specified period constitutes a waiver of the right to judicial review.

(j) The commission [~~attorney general~~] may bring an action in a Travis County district court in the name of the state and the attorney general to enforce a final order from which an appeal has not been taken as provided by this article or may serve a notice of assessment on the defaulting party stating the amount due. A notice of assessment served under this subsection is prima facie evidence of the contents of the notice. However, the defaulting party may show the incorrectness of the notice of assessment. The notice shall be served in the manner provided by law for service of process on a defendant in a civil action in district court. A person who is aggrieved by the determination of the commission as stated in the notice of assessment may seek judicial review of the assessment by filing a petition for judicial review in a Travis County district court not later than the 30th day after the date on which the notice of the assessment is served. A copy of the petition shall be served on a member of the commission or on a designee of the commission for service of process in the manner prescribed by law for service of process on a defendant in a civil action in district court. If the party on whom a notice of assessment is served does not seek judicial review as provided by this subsection, the assessment is final for all purposes. An assessment that is not contested or that is upheld after judicial review shall be treated as if it were the final judgment of a district court and shall be recorded, enforced, and renewed in the same manner. Unless the adverse party prevails in the civil action or the notice of assessment is

reversed by a reviewing court, the adverse party shall pay all costs of either action, including [In the action the attorney general also may seek, and the court may order, recovery of] attorney's fees, [including] investigation costs, service costs, court costs, and other applicable costs [of court].

SECTION 3. Article 5155, Revised Statutes, is amended by adding Sections 5B and 5C to read as follows:

Sec. 5B. RECIPROCAL COLLECTION ARRANGEMENTS. The commission may enter into reciprocal arrangements with appropriate authorized agencies of the United States, other states of the United States, Puerto Rico, the District of Columbia, or the Virgin Islands for the collection of wage claims that have become final under the laws of the jurisdiction in which they were filed.

Sec. 5C. NOTICE OF DELINQUENCY; LEVY. (a) If, under a final order, a party is determined to be delinquent in the payment of wages, penalties, interest, or other amounts due under this article, the commission may notify personally or by registered mail any person who:

(1) possesses or controls any asset of the delinquent party, including a credit, bank, or savings account, deposit, or other intangible or personal property; or

(2) owes a debt to the delinquent party.

(b) A notice under this section to a state officer, department, or agency must be provided before the officer, department, or agency presents to the comptroller the claim of the delinquent party.

(c) A notice under this section may be given at any time after the wages, penalties, interest, or other amounts due under this article become delinquent. The notice must state the amount of wages, penalties, interest, or other amounts due and owing and any additional amount that will accrue by operation of law in a period not to exceed 30 days and, in the case of a credit, bank, or savings account or deposit, is effective only up to that amount.

(d) On receipt of a notice under this section, the person receiving the notice:

(1) shall advise the commission not later than the 20th day after the date on which the notice is received of each asset belonging to the delinquent party that is possessed or controlled by the person receiving the notice and of each debt owed by the person receiving the notice to the delinquent party; and

(2) unless the commission consents to an earlier disposition, may not transfer or dispose of the asset or debt possessed, controlled, or owed by the person on the date the person received the notice within the 60-day period beginning on the date of receipt of the notice.

(e) A notice under this section that attempts to prohibit the transfer or disposition of an asset possessed or controlled by a bank is not effective unless it is delivered or mailed to the principal office of the bank or the office of the bank at which the deposit is carried or the credit or property is held.

(f) A person who receives a notice under this section and who violates Subdivision (2) of Subsection (d) of this section is liable to the commission for the amount of the indebtedness of the delinquent party with respect to whose obligation the notice was given, to the extent of the value of the affected asset or debt.

(g) At any time during the last 45 days of the 60-day period provided by Subdivision (2) of Subsection (d) of this section, the commission may levy on the asset or debt by delivery of a notice of levy. On receipt of the levy notice, the person possessing the asset or debt shall transfer the asset to the commission or pay to the commission the amount owed to the delinquent party.

(h) A notice delivered under this section is effective at the time of delivery against all property, rights to property, credits, or debts involving the delinquent party that are not on the date of the notice subject to a preexisting lien, attachment, garnishment, or execution issued through a judicial process.

(i) *A person acting in accordance with the terms of a notice issued by the commission under this section is discharged from any obligation or liability to the delinquent party with respect to the property or rights to property, credits, or debts of the party affected by compliance with the notice.*

SECTION 4. Section 7, Article 5155, Revised Statutes, is amended to read as follows:

Sec. 7. *POWERS AND DUTIES OF COMMISSION; RULES; SUBPOENAS [ADMINISTRATION OF OATHS].* (a) *The commission shall administer this article and shall [may] adopt rules as necessary to implement this article.*

(b) *The commission may require reports, conduct investigations, and take other action as it considers [administer oaths as] necessary to implement this article.*

(c) *In the discharge of the duties imposed by this article, any duly authorized representative or member of the commission may administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in the administration of this article. Notwithstanding Chapter 152 or 154, Local Government Code, or any other law of this state, the fees of sheriffs and constables for serving a subpoena under this subsection shall be paid by the commission out of its administrative funds, and the comptroller shall issue warrants for those fees as directed by the commission.*

(d) *In the case of contumacy or other refusal to obey a subpoena issued by a member of the commission or any authorized representative of the commission to any person, any county or district court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found, resides, or transacts business shall have jurisdiction on application by the commission or its representative to issue to the person an order requiring the person to appear before a commissioner, the commission, or its authorized representative to produce evidence if so ordered or to give testimony regarding the matter under investigation or in question. Failure to obey the court order may be punished by the court as contempt. A person who, without just cause, fails or refuses to attend and testify, to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, or other records in obedience to a subpoena of the commission, commits an offense. An offense under this subsection is punishable by a fine of not less than \$200, by confinement for not more than 60 days, or by both fine and confinement. Each day of violation constitutes a separate offense.*

SECTION 5. This Act takes effect September 1, 1993, and applies only to a wage claim filed with the Texas Employment Commission on or after that date. A wage claim filed before that date is governed by the law in effect on the date that the claim was filed, and the former law is continued in effect for that purpose.

SECTION 6. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 11, 1993, by a viva-voce vote; passed the House on May 21, 1993, by a non-record vote.

Approved June 9, 1993.

Effective Sept. 1, 1993.