

## CHAPTER 331

## S.B. No. 939

## AN ACT

relating to the employment of children; providing criminal and administrative penalties.

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

SECTION 1. Section 12, Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 12. PENALTY. An offense under this Act is a Class B [C] misdemeanor.

SECTION 2. Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), is amended by adding Sections 13 and 14 to read as follows:

Sec. 13. ADMINISTRATIVE PENALTY. (a) *If the commission determines that a person who employs a child has violated this Act or a rule adopted under this Act, the commission may assess an administrative penalty against that person as provided by this section.*

(b) *The penalty for a violation may be in an amount not to exceed \$10,000.*

(c) *The amount of the penalty shall be based on:*

(1) *the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts;*

(2) *the history of previous violations;*

(3) *the amount necessary to deter future violations;*

(4) *efforts to correct the violation; and*

(5) *any other matter that justice may require.*

(d) *If, after examination of a possible violation and the facts relating to that possible violation, the commission determines that a violation has occurred, the commission shall issue a preliminary determination that states the facts on which the determination is based, the fact that an administrative penalty is to be imposed, and the amount of the penalty.*

(e) *Not later than the 14th day after the date the report is issued, the commission shall give written notice of the preliminary determination to the person charged with the violation. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.*

(f) *Not later than the 20th day after the date on which the notice is mailed, the person may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.*

(g) *If the person requests a hearing, the commission shall set a hearing and give notice of the hearing to the person. The hearing is subject to the commission rules and hearings procedures used by the commission to determine a claim under the Texas Unemployment*

Compensation Act (Article 5221b-1 et seq., Vernon's Texas Civil Statutes) and its subsequent amendments. The hearings examiner shall issue a decision.

(h) If it is determined after the hearing that a penalty may be imposed, the commission shall enter a written order to that effect. The commission shall notify the person in writing of the decision and the amount of the penalty imposed.

(i) The notice of the commission's order must include a statement of the right of the person to judicial review of the order.

(j) Not later than the 30th day after the date the commission's order is final, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the commission's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the commission by certified mail.

(l) If the commission receives a copy of an affidavit under Subsection (k)(2) of this section, the commission may file with the court not later than the fifth day after the date the copy is received a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commission may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commission:

(1) is instituted by bringing an action as provided by Section 6, Texas Unemployment Compensation Act (Article 5221b-4, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not

*upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.*

*(q) The attorney general may bring a suit in a district court in Travis County to enforce a final order from which an appeal under this Act has not been taken. In the suit and on the request of the attorney general, the court may order payment of attorney's fees and other costs of court.*

*(r) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.*

*Sec. 14. INJUNCTION: ATTORNEY GENERAL'S ACTION. The attorney general may seek injunctive relief in district court against an employer who repeatedly violates the requirements established by this Act relating to the employment of children.*

SECTION 3. (a) The change in law made by Section 12, Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes), as amended by Section 1 of this Act, applies only to the punishment for an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 1993.

SECTION 5. 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 May 6, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 19, 1993: Yeas 31, Nays 0; passed the House, with amendment, on May 13, 1993, by a non-record vote.

Approved May 29, 1993.

Effective Sept. 1, 1993.