HOUSE
RESEARCH
ORGANIZATION bill analysis 5/23/97

SB 777
Carona
(McCall)

SUBJECT: Authorizing employer deductions from employee pay

COMMITTEE: Business and Industry — favorable, as amended

VOTE: 7 ayes — Brimer, Rhodes, Corte, Elkins, Janek, Solomons, Woolley

1 nay — Dukes

1 present, not voting — Giddings

SENATE VOTE: On final passage, April 8 — 31-0

WITNESSES: For — None

Against — Rick Levy, AFL-CIO

On — Mike Sheridan, Texas Workforce Commission

BACKGROUND: State law prohibits employers from withholding or diverting any part of an employees wages unless ordered by a court, permitted by state or federal law, or authorized by a written statement from the employee to deduct the wages for a lawful purpose.

DIGEST: SB 777 would amend the Labor Code to allow an employer to withhold any part of an employee's wages without authorization from the employee in order to reimburse the employer for:

- misappropriation by the employee of the employer's money;
- overpayment of wages or another form of pay;
- a loan from the employer in connection with employment;
- a wage advance; or
- reasonable costs of any benefit received or obtained by the employee that the employee failed to authorize in writing.

Employers would have to notify employees of the deduction in writing no later than the payday on which the wages were deducted.

Benefits would include anything of monetary value that an employees requested and obtained from an employer and elected to retain, including: health or legal insurance, pension or retirement plans, goods or services purchased on credit from the employer; or the personal nonwork-related use of work materials, supplies, or equipment. By using such materials, an employee would be considered as having requested and obtained them.

To withhold wages, employers would have to provide clear and convincing evidence that the deduction was permitted, or in the case of misappropriation, a written acknowledgment from employees that the money was obtained without authorization. Deductions for reimbursing loans or wage advances would have to be permitted according to the terms of any written agreement between the employer and employee. Loan repayments extending beyond one year would have to be evidenced by a written and signed repayment agreement.

An employer could not deduct wages to reimburse insurance payments made to an employee after an injury or while the employee was receiving certain workers' compensation income benefits.

An employer making a deduction that violated these provisions would be subject to an administrative penalty of either the amount of deducted wages or $1,000.

SB 777 would take effect September 1, 1997.

SUPPORTERS SAY:

SB 777 would allow employers to recover money or property that is rightfully theirs. The bill would primarily address accounting mistakes, whereby employees receive more money in their paychecks than they are actually owed. Current law makes no provision for recovering that money. In other situations, employees leave a position with office or shop items that belong to the employer or without repaying advanced wages or loans.

It is unjust to deny employers a principal means of recouping money or property that has been stolen, embezzled, or accidentally transferred to an employee. Other states allow employers this option, and Texas should be no exception.

SB 777 would allow employers to recover reimbursement while protecting the rights of employees. In order to make the wage deductions, employers would have to provide clear and convincing evidence that they were owed the money in question. Wages could only be deducted for misappropriation if the employee submitted a signed statement admitting to taking the money. The bill would simply provide a recourse for these employers that is simple, and fair, without infringing on the rights of employees to keep their wages.

OPPONENTS SAY:

SB 777 would threaten the inviolate principle that an employee is entitled to receive the wages and benefits that employers agree to pay. An employer who has a grievance against an employee has many avenues through which to pursue redress, including the legal system. Employers are not now denied any proper means of recovering property that is theirs. SB 777 would establish an alarming precedent by allowing employers to take money they feel they are owed without going through the appropriate channels.

In no other situation does the law allow individuals to engage in self help by taking another's money if they feel they are entitled to it. This bill would grant employers super-creditor status. Employment laws are based on the principle that due process is necessary when one person controls the pursestrings that affect another, but this bill would make the employer both prosecutor and judge.

The bill would shift the burden for recovering disputed wages from employers to employees. Such a shift would be unfair, as the consequences of delaying or losing wages would be much greater for the employee than for the employer. Inability to recover wages might result in distress for employers; for employees living paycheck to paycheck, however, it could mean being unable to buy food, pay rent, or provide for their families.

SB777 would be more likely to perpetrate injustices or fiscal misconduct than to remedy them. It does not contain adequate protections for employees from unscrupulous employers who might seek to steal from or otherwise defraud them. The requirement that employers produce “convincing evidence” before deducting wages is overly vague, and could allow the deduction of wages based on suspicion or accusation rather than hard proof. Employees should not be allowed to engage in vigilante debt collection but should be required to prove wrongdoing in order to deduct wages.

OTHER OPPONENTS SAY:

SB 777 should require more evidence of employers before allowing them to deduct wages from employees' paychecks. For example, requiring employers to provide proof in the form of audio and video recordings of employees' misdeeds would provide a safeguard against false accusations.

NOTES:

The committee amendment would provide that an employer could not deduct wages to reimburse payments made after an injury to an employee or while the employee was receiving certain workers' compensation income benefits.