

(The House considered SB 741 by Nichols, the Senate companion bill, in lieu of HB 2661, the House version of the bill, which had been set on the daily calendar and was analyzed by the House Research Organization. The bill subsequently was enacted as SB 741.)

HOUSE
RESEARCH

ORGANIZATION bill analysis

4/27/2009

HB 2661

Darby

SUBJECT: Jurisdiction over a wage claim filed after deadline

COMMITTEE: Technology, Economic Development and Workforce — favorable, without amendment

VOTE: 6 ayes — Strama, Button, Eissler, Gattis, Harless, Ritter
0 nays
3 absent — Parker, F. Brown, Rodriguez

WITNESSES: For — (*Registered, but did not testify*: Rick Levy, Texas AFL-CIO; Dennis Speight, Texas Watch)

Against — (*Registered, but did not testify*: Michael Golden, Texas Employment Law Council)

On — John Moore, Texas Workforce Commission

BACKGROUND: Labor Code, sec. 61.051 outlines provisions for filing a wage claim. An employee who is not paid wages according to established guidelines can file a wage claim with the Texas Workforce Commission (TWC). The claim must be in writing and, as specified by sec. 61.051(c), must be filed within 180 days after the date the wages claimed became due for payment.

Labor Code, sec. 61.052 requires that a TWC examiner analyze each filed wage claim, and if the claim alleges facts actionable by TWC, investigate the claim and issue a preliminary wage determination order that either dismisses the wage claim or orders payment of unpaid wages.

If a TWC examiner imposes an administrative penalty against an employer that acted in bad faith, the preliminary wage determination order must include an order for payment of the penalty. The examiner must mail notice of the preliminary wage determination order to each party at the last known address on record.

DIGEST: HB 2661 would amend Labor Code, 61.051(c) by stating that the 180-day deadline for filing a wage claim is a matter of jurisdiction for the TWC.

The bill also would amend Labor Code, 61.052 by adding that a wage claim filed later than the 180-day deadline would have to be dismissed by a Texas Workforce Commission examiner for lack of jurisdiction.

The bill would take effect September 1, 2009.

SUPPORTERS SAY: HB 2661 would provide that the 180-day deadline to file a wage claim is a matter of jurisdiction for the Texas Workforce Commission (TWC). The jurisdiction of TWC was questioned by *Igal v. Brightstar Information Technology Group*, (TX 2006), which related to the Texas Payday Act under Labor Code, ch. 61. The payday act was designed to deter employers from withholding wages by providing wage claimants an informal avenue for the enforcement of wage claims too small to justify the cost of a civil lawsuit. In 2008 there were almost 15,000 wage claims filed with TWC.

Currently, the attorney general has to defend litigation when an administrative appeal is filed because a claim was dismissed for lack of jurisdiction, which should have been the final determination in the case. This is a costly drain on the state's time and resources. The deadline would provide a defense for TWC to dismiss a wage claim based solely on whether the claim was filed within the established time period rather than on the merits of the case. The bill would not prevent a claimant from later filing a lawsuit based on the merits of the case.

The possibility of dual litigation in TWC through administrative appeal and civil lawsuit is highly unlikely. By practice, TWC stops an administrative proceeding if there is an outside lawsuit or arbitration occurring on a related claim.

OPPONENTS SAY: HB 2661 could create the possibility of a wage claimant pursuing dual litigation — within TWC through administrative appeal, and in state court through a civil lawsuit. This could create a situation where state and employer resources are being expended in both cases. These two litigation tracks could result in inconsistent decisions — one from the civil suit and one from the TWC appeal process.

NOTES: The companion bill, SB 741 by Nichols, passed the Senate by 31-0 on the Local And Uncontested Calendar on April 2 and was referred to the House Technology, Economic Development, and Workforce Committee on April 14.