

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1537
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Economic Development
3/27/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 1537 aligns state law to federal law by amending the Texas Labor Code to conform to the changes made by Congress in H.R. 2832 (General System of Preferences). C.S.S.B. 1537 places in statute the prohibition to relieve an employer from chargeback for payable claims under the Unemployment Insurance (UI) program, when the employer or an agent of the employer fails to respond timely or adequately to the state's request for information during the adjudication of an UI claim that subsequently was paid but results in an overpayment, and has established a pattern of failing to respond timely or adequately to requests from the Texas Workforce Commission (TWC) for information relating to claims for UI benefits

Currently, when an individual applies for UI benefits, an employer receives a notice of initial claim and TWC also requests information to be provided relating to the job separation. From the point at which an initial claim is filed, TWC has 21 days to issue benefits to the individual per federal law. At times, TWC may not receive a response containing information from an employer about the job separation, and the basis to make a formal decision on the issuance of benefits is based on limited information. If benefits are issued, the employer's unemployment insurance tax account is charged for the benefits. However, if through the appeals process the decision to issue benefits is reversed, the chargeback on the employer's unemployment insurance tax account related to the claim is then reversed.

The Labor Code currently does not explicitly reflect the new federal requirements under H.R. 2832 that prohibits states from relieving an employer from chargeback for payable claims, when the employer or an agent of the employer fails to respond timely or adequately to the state's request for information during the adjudication of an UI claim that subsequently was paid but results in an overpayment, and has established a pattern of failing to respond timely or adequately to requests from the state agency for information relating to claims for UI benefits.

In order to remain in conformity with federal law, the state must make such statutory changes. If the state fails to conform to federal law, the state would be out of compliance with federal law and the state's federal grant for the administration of the unemployment insurance program could be rescinded by the federal government.

C.S.S.B. 1537 amends current law relating to certain required notices under the Texas Unemployment Compensation Act, including employer liability arising from failure to provide the notice.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 2 (Section 208.004, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 205.013, Labor Code, by adding Subsection (d), to provide that, if a reimbursing employer pays a reimbursement to the Texas Workforce Commission (TWC) for benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle, the employer is not entitled to a refund of, or credit for, the amount paid by

the employer to TWC unless the employer has complied with the requirements of Section 208.004 (Notification of Adverse Facts Affecting Claim; Waiver) with respect to the claimant.

SECTION 2. Amends Section 208.004, Labor Code, by adding Subsections (a-1), (c), (d), (e), and (f), as follows:

(a-1) Requires that a notification provided by a person under Subsection (a) (relating to certain individuals being required to notify TWC promptly of any facts known to the person that may adversely affect the claimant's right to benefits or affect a charge to the person's account), including an initial response to a notice mailed to the person under Section 208.002 (Initial Claim; Last Work), include sufficient factual information to allow TEC to make a determination regarding the claimant's entitlement to benefits under this subtitle.

(c) Requires benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle, notwithstanding Subchapter B (Chargebacks), Chapter 204, to be charged to the account of a person if:

(1) the person, or the person's agent, without good cause, fails to provide adequate notification under this section; and

(2) TWC determines that the person, or the person's agent, has failed to provide timely and adequate notification under this section on at least two prior occasions.

(d) Provides that, for purposes of Subsection (c), a notification is not adequate if the notification merely alleges that a claimant is not entitled to benefits without providing sufficient factual information, other than a general statement of the law, to support the allegation.

(e) Provides that, for purposes of Subsection (c), good cause is established only by showing that a person, or the person's agent, was prevented from complying with this section due to compelling circumstances that were beyond the person's control.

(f) Authorizes TWC to adopt rules as necessary to implement this section.

SECTION 3. Amends Section 212.005, Labor Code, as follows:

Sec. 212.005. New heading: CHARGEBACK ON REVERSAL OF DETERMINATION OR DECISION ALLOWING BENEFITS PROHIBITED; EXCEPTION. (a) Prohibits a chargeback, except as provided by Subsection (b), from being made to an employer's account because of payments having been made under a determination or decision to the claimant for any benefit period with regard to which the claimant is finally denied benefits by a modification or reversal of the determination or decision.

(b) Requires a chargeback to be made to an employer's account for benefits paid to a claimant that are not in accordance with the final determination or decision under this subtitle if the benefits were paid due to the failure of the employer, or the employer's agents, to comply with Section 208.004.

SECTION 4. Provides that the changes in law made by this Act apply only to a final determination made by TWC on or after October 1, 2013, that a person received an erroneous payment. Provides that a final determination made before that date is governed by the law in effect on the date the determination was made, and the former law is continued in effect for that purpose.

SECTION 5. Effective date: October 1, 2013.