

BILL ANALYSIS

Senate Research Center

C.S.S.B. 473
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Pursuant to Chapter 92 (Temporary Common Worker Employers), Labor Code, the Texas Department of Licensing and Regulation (TDLR) regulates and issues licenses to temporary common worker employers. Temporary common worker employers provide unskilled labor to other businesses, often on a daily basis. These employers must obtain a license for each location they operate.

Under TDLR's current program, approximately 24 temporary common worker companies have registered approximately 109 licensed locations. There are no pending enforcement cases, no complaints have been opened in the past three years, and no penalties have been assessed by TDLR since the program's inception.

Given the program's small size, the absence of complaints, and the fact that municipalities with a population greater than one million already have the authority to regulate temporary common worker employers, the statewide licensing program is unnecessary.

C.S.S.B. 473 repeals Chapter 92 of the Labor Code to remove TDLR's oversight of temporary common worker employers. In addition, C.S.S.B. 473 creates a new chapter within the Local Government Code, which would authorize all municipalities and counties to adopt a licensing program for their jurisdictions. Municipalities and counties will not be required to adopt licensing programs; however, if they do so, then the programs would have to encompass many of the provisions that are in place in the statewide licensing program today.

C.S.S.B. 473 amends current law relating to the regulation of temporary common worker employers, provides a criminal penalty, and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Commission on Licensing and Regulation is rescinded in SECTION 2 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle C, Title 7, Local Government Code, by adding Chapter 247, as follows:

CHAPTER 247. MUNICIPAL AND COUNTY AUTHORITY TO REGULATE TEMPORARY COMMON WORKER EMPLOYERS

Sec. 247.001. DEFINITIONS. Defines "common worker," "labor hall," "temporary common worker employer," and "user of common workers" in this chapter.

Sec. 247.002. AUTHORITY TO REGULATE. (a) Authorizes a municipality by ordinance or a county by order to:

(1) require that a temporary common worker employer obtain a license issued by the municipality or county on a periodic basis in order to operate

as a temporary common worker employer in the municipality or county;
and

(2) collect a fee for the issuance of a temporary common worker employer license.

(b) Provides that an ordinance adopted by a municipality under this chapter applies only inside the municipality's corporate limits.

(c) Provides that an order adopted by a county applies only to the parts of the county outside the corporate limits of a municipality.

Sec. 247.003. REGULATION REQUIREMENTS. Requires that the regulations adopted by a municipality or county under this chapter:

(1) provide that the municipality or county will issue a temporary common worker employer license to a person who meets the application requirements established by the municipality or county and pays the application and registration fees set by the municipality or county;

(2) provide that a license issued under this chapter is not assignable or transferable;

(3) require each license holder to maintain and make available to a representative of the municipality or county records that show for each common worker provided by the license holder to a user of common workers:

(A) the name and address of the worker;

(B) the hours worked by the worker;

(C) the places at which the work was performed by the worker;

(D) the wages paid to the worker; and

(E) any deductions made from the wages paid to a worker;

(4) require each license holder to maintain the records described by Subdivision (3) at least until the second anniversary of the date on which the worker was last employed by the license holder;

(5) provide that information received by the municipality or county under Subdivision (3) is privileged and confidential and is for the exclusive use of the municipality or county and is prohibited from being disclosed to any other person except on the entry of a court order requiring disclosure or on the written consent of a person under investigation who is the subject of the records;

(6) require each license holder to post for inspection in a location that is in open view to the public on the licensed premises the license for a place of business at which the license holder operates as a temporary common worker employer and a notice of any charge permitted under this chapter that the license holder is authorized to assess against a common worker for equipment, tools, transportation, or other work-related services;

(7) require each license holder that operates a labor hall as part of a licensed premises to provide adequate facilities for a worker waiting for a job assignment that include restroom facilities for both men and women, drinking water, sufficient seating, and access to vending refreshments and food; and

(8) prohibit each license holder from:

(A) charging a common worker for safety equipment, clothing, or accessories required by the nature of the work, either by law, custom, or the requirements of the user of common workers; uniforms, special clothing, or other items required as a condition of employment by the user of common workers; the cashing of a check or voucher; or the receipt by the worker of earned wages; or

(B) deducting or withholding any amount from the earned wages of a common worker except a deduction required by federal or state law or a reimbursement for a cash advance made to the worker during the same pay period.

Sec. 247.004. LICENSE HOLDER AS EMPLOYER. (a) Provides that each license holder under this chapter is the employer of the common workers provided by that license holder.

(b) Authorizes a license holder under this chapter to hire, reassign, control, direct, and discharge the employees of the license holder.

Sec. 247.005. INJUNCTION; CRIMINAL PENALTY. (a) Authorizes a municipality or county to bring an action in a district court for an injunction to prohibit the violation of a regulation adopted under this chapter.

(b) Provides that a person commits an offense if the person violates a municipal or county regulation adopted under this chapter. Provides that an offense under this subsection is a Class C misdemeanor.

SECTION 2. Repealer: Chapter 92 (Temporary Common Worker Employers), Labor Code.

SECTION 3. (a) Provides that an administrative proceeding pending under Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code, or Chapter 92, Labor Code, on the effective date of this Act related to a violation of Chapter 92, Labor Code, as that chapter existed immediately before the effective date of this Act, is dismissed.

(b) Authorizes an administrative penalty assessed by the Texas Commission of Licensing and Regulation or the executive director of the Texas Department of Licensing and Regulation (TDLR) related to a violation of Chapter 92, Labor Code, as that chapter existed immediately before the effective date of this Act, to be collected as provided by Chapter 51, Occupations Code.

(c) Provides that the changes in law made by this Act do not affect the pending prosecution of an offense under Chapter 92, Labor Code, as that chapter existed immediately before the effective date of this Act. Provides that an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. Provides that for purposes of this subsection, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

(d) Requires TDLR to return to a person who holds a valid license under Chapter 92, Labor Code, as that chapter existed immediately before the effective date of this Act, a prorated portion of the fee paid to TDLR for the issuance or renewal of the license.

SECTION 4. Effective date: September 1, 2013.