



Legislative Proposals

88th Texas Legislature



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Fraud Deterrence and Compliance Monitoring

1 **LEGISLATIVE RECOMMENDATION**

2 **Identity (ID) Verification Requirement**

3
4 **Program Affected:**

5 Unemployment Insurance

6 **Title:**

7 ID Verification Requirement

8 **Recommendation:**

9 Amend Texas Labor Code §207.021 by adding a condition stating an
10 individual is eligible for benefits only if the individual complies with
11 Commission requirements to verify their identity. Labor Code § 207.021
12 provides eligibility conditions that must be met by an individual in order to
13 receive benefits.

14 **Rationale:**

15 TWC currently uses a patchwork of Labor Code §207.021(a)(1) (Reporting)
16 and (a)(2) (Claim for benefits) and Commission Rule §815.20 (3)(A)
17 (Establishing a correct SSN) and (3)(C) (Furnishing claim information to the
18 Commission) to withhold benefit payments until an individual’s identity has
19 been verified.

20 Amending §207.021 to state that, among other eligibility criteria, an
21 individual is eligible for benefits only if they have verified their identity as
22 required by the Commission will result in a clear means by which to
23 administer identity verification.

24 **Confidentiality to Federal UC Law**

25 Regional US Department of Labor staff reviewed the concept of this proposal
26 and raised no issues with respect to Federal-law conformity.

27 **Fiscal Impact:**

28 TWC anticipates no fiscal impact. The new section of law will change the
29 “Law Reference” used on identity determinations. It does not add a new
30 issue or reason code and does not add a new determination. The text
31 change to the Law Reference can be made and tested by UI staff without
32 AD&M involvement.

33 TWC’s Unemployment Insurance and Fraud Deterrence and Compliance
34 Monitoring (FDCM) divisions currently require claimants who meet a “High-
35 Risk” threshold to verify their identity. This proposal provides a clear
36 requirement under the law for holding a claimant ineligible for failing to do
37 so.

38 **Contact:**

39 Fraud Deterrence and Compliance Monitoring – Jason Stalinsky

1 Sec. 207.021. Benefit Eligibility Conditions

2 (a) Except as provided by Chapter 215, an unemployed
3 individual is eligible to receive benefits for a benefit
4 period if the individual:

5 (1) has registered for work at an employment office and
6 has continued to report to the employment office as
7 required by rules adopted by the commission;

8 (2) has made a claim for benefits under Section
9 208.001;

10 (3) is able to work;

11 (4) is available for work;

12 (5) is actively seeking work in accordance with rules
13 adopted by the commission;

14 (6) for the individual's base period, has benefit wage
15 credits:

16 (A) in at least two calendar quarters; and

17 (B) in an amount not less than 37 times the
18 individual's benefit amount;

19 (7) after the beginning date of the individual's most
20 recent prior benefit year, if applicable, earned
21 wages in an amount equal to not less than six times
22 the individual's benefit amount;

23 (8) has been totally or partially unemployed for a
24 waiting period of at least seven consecutive days;
25 and

26 (9) participates in reemployment services, such as a
27 job search assistance service, if the individual
28 has been determined, according to a profiling
29 system established by the commission, to be likely
30 to exhaust eligibility for regular benefits and to
31 need those services to obtain new employment,
32 unless:

33 (A) the individual has completed participation in
34 such a service; or

35 (B) there is reasonable cause, as determined by
36 the commission, for the individual's failure
37 to participate in those services.

38 (10) has verified their identity as required by the
39 Commission, including electronically, by phone, in
40 person, or through a third-party vendor.

1 **LEGISLATIVE RECOMMENDATION**

2 **Confidentiality of Fraud Detection and Prevention Information**

3 **Program Affected:**

4 Unemployment Insurance

5 **Title:**

6 Confidentiality of Fraud Detection and Prevention Information

7 **Recommendation:**

8 Modify Texas Labor Code §301.085 to provide an Open Records Act
9 exception for TWC’s fraud detection and prevention related information.

10 **Rationale:**

11 During the pandemic, TWC received numerous requests concerning
12 contracts, data, and protocols relating to our fraud fighting efforts. Release
13 of information related to fraud detection and prevention in the
14 Unemployment Insurance (UI) system could provide a blueprint for how to
15 defraud TWC and thwart the Office of Investigations fraud fighting efforts.
16 Therefore, it is imperative that this information remain protected from these
17 requests.

18 Currently, Labor Code §301.085 provides an exception for unemployment
19 compensation information. It is recommended that an additional provision be
20 added to this section which would except TWC fraud related contracts, data,
21 and protocols from disclosure under Texas Government Code Chapter 552,
22 the Texas Open Records Act.

23 The Texas Open Records Act exceptions found in Texas Government Code
24 sections 552.108 (Certain Law Enforcement, Corrections, and Prosecutorial
25 Information) and 552.139 (Confidentiality of Government Information
26 Related to Security or Infrastructure Issues for Computers) may provide a
27 useful template for crafting a similar exception for TWC fraud.

28 **Conformity to Federal Law:**

29 Staff anticipates no conformity issues to Federal UC law. Nothing in the
30 proposal runs counter to the minimum requirements related to the
31 confidentiality of UC information as provided for in 20 CFR 603.

32 **Fiscal Impact:**

33 No fiscal implication to the State is anticipated.

34 TWC’s Open Records and Communications departments will be impacted by
35 this proposal. Staff will be able to reference the Texas Labor Code restriction
36 when responding to inquiries for information related to fraud detection and
37 prevention activities. Staff will need to be advised of the new law and how it
38 applies.

39
40 This analysis assumes time spent training staff on the new provision can be
41 absorbed within current resources.

1 While TWC fully supports transparency in government, this exception is
2 necessary for preventing the release of certain detailed information which, if
3 made public, could be used by criminal enterprises to circumvent the fraud-
4 prevention protocols we have worked so hard to put in place.

5 **Contact:**

6 Fraud Deterrence and Compliance Monitoring – Jason Stalinsky

1 Sec. 301.085. Unemployment Compensation, ~~and~~ Job Matching
2 Services Information, and Fraud Detection Information;
3 Offense; Penalty

4 (a) In this section:

5 (1) "Job matching services information" means information
6 in the records of the commission that pertains to the
7 commission's job matching services provided to
8 employers and job seekers through the Internet,
9 workforce centers, or other means.

10 (2) "Unemployment compensation information" means
11 information in the records of the commission that
12 pertains to the administration of Subtitle A, including
13 any information collected, received, developed, or
14 maintained in the administration of unemployment
15 compensation benefits or the unemployment compensation
16 tax system.

17 (3) "Fraud detection information" means information
18 including contracts, records, data, protocols,
19 technology, manuals, instructions, investigative
20 materials, crossmatches, mental impressions, and
21 communications that may reveal the methods or means by
22 which the commission detects, investigates,
23 adjudicates, or seeks civil or criminal enforcement of
24 fraud detection and prevention.

25 (b) Consistent with federal law, the commission shall adopt and
26 enforce reasonable rules governing the confidentiality,
27 custody, use, preservation, and disclosure of unemployment
28 compensation information. The rules must include safeguards
29 to protect the confidentiality of identifying information
30 regarding any individual or any past or present employer or
31 employing unit contained in unemployment compensation
32 information, including any information that foreseeably could
33 be combined with other publicly available information to
34 reveal identifying information regarding the individual,
35 employer, or employing unit, as applicable.

36 (b-1) The commission shall adopt and enforce reasonable rules
37 governing the confidentiality, custody, use, preservation,
38 and disclosure of job matching services information. The
39 rules must include safeguards to protect the confidentiality
40 of identifying information regarding any individual or any
41 past or present employer or employing unit contained in job
42 matching services information, including any information
43 that foreseeably could be combined with other publicly
44 available information to reveal identifying information
45 regarding the individual, employer, or employing unit, as
46 applicable.

47 (c) Unemployment compensation information, ~~and~~ job matching
48 services information, and fraud detection information are not

1 public information for purposes of Chapter 552, Government
2 Code.
3 (d) Unless permitted by this subchapter or commission rule, a
4 person commits an offense if the person solicits, discloses,
5 receives, or uses, or authorizes, permits, participates in,
6 or acquiesces in another person's use of, unemployment
7 compensation information or job matching services information
8 that reveals:
9 (1) identifying information regarding any individual or
10 past or present employer or employing unit; or
11 (2) information that foreseeably could be combined with
12 other publicly available information to reveal
13 identifying information regarding any individual or
14 past or present employer or employing unit.
15 (e) An offense under Subsection (d) is a Class A misdemeanor.
16
17
18

1 **LEGISLATIVE RECOMMENDATION**

2 **Bank Freeze Authority for Fraud**

3
4 **Program Affected:**

5 Unemployment Insurance/Finance - Collections

6 **Title:**

7 Bank freeze authority for fraud.

8 **Recommendation:**

9 Amend the overpayment provisions of Texas Labor Code §213.059 to allow
10 for collection of fraudulent claimant overpayments by bank levy. Texas Labor
11 Code §§212.006 and 214.002 currently authorizes TWC to collect benefit
12 overpayments by offsetting future benefit payments, claimant repayment,
13 notice of assessment, and bonding. For unpaid tax debts, TWC has the
14 authority to freeze/levy employer bank accounts to collect the unpaid
15 amount. Using this method of collection to recover fraudulently paid
16 unemployment benefits would be a last resort, following attempted collection
17 through the Federally mandated Treasury Offset Program.

18 **Rationale:**

19 Similar to Treasury Offset Program authority under Labor Code §214.009,
20 TWC could increase the collection of overpayments resulting from fraud by
21 amending TUCA's overpayment provisions to allow for collection of
22 fraudulent claimant overpayments by bank levy under §213.059.

23 If TWC elects to move forward with adding ID theft determinations for
24 imposters, then it would be prudent to also consider allowing collection of
25 these amounts by bank freeze if the imposter's identity is ascertainable.
26 Additional authority requiring bank cooperation with providing account
27 information would also be assistive.

28 A threshold, established by the Commission in rule, could be considered to
29 safeguard against TWC seizing personal essentials for living such as rent or
30 medication. For example, Wisconsin statute precludes levying the first
31 \$1,000 in the claimant's account. Another point of reference could be Senate
32 Bill (SB) 644, Senator Zaffirini Vice Chair Senate Natural Resources and
33 Economic Development Committee, from the 87th legislative session. SB
34 644 did not pass committee, but it sought to amend the Texas Property
35 Code by exempting from seizure the amount on deposit in an account to the
36 monthly equivalent of 250% of the federal poverty guidelines for a family of
37 four, except for court-ordered alimony, child support, or spousal
38 maintenance. At the time, Fraud Deterrence and Compliance Monitoring
39 (FDCM) calculated that amount to be approximately \$5,500.

40
41
42 **Conformity to Federal Law:**

1 Staff anticipates no conformity issues to Federal UC law. States have wide
 2 discretion with respect to methods of recovering unemployment benefit
 3 overpayments.

4 **Fiscal Impact:**

5 TWC anticipates a total five-year cost of \$60,810, in programming costs,
 6 which could be absorbed using existing resources. These costs include
 7 creating a notice to customers, working with DCS to produce sample letters,
 8 and developing code infrastructure to manage recovering funds from a
 9 freeze/levy process. These costs could be absorbed using existing resources.

10 Staff anticipates that this proposal, if enacted, would result in a positive cash
 11 flow to the unemployment compensation fund since it provides for an
 12 additional avenue to recoup unemployment benefit overpayments. TWC is
 13 not able to calculate the amount of debt we would collect because we do not
 14 know how many customers' bank accounts have less than the threshold
 15 amount (\$5000) that would be exempt from collection. TWC will not be able
 16 to collect from individuals who have a low account balance.

Position	FY 2024 hours	FY 2024 Cost	5-Year \$ Impact
Accounts Examiner IV	40	\$5,561	\$5,561
Programmer V	60	\$10,275	\$10,275
Systems Administrator V	40	\$7,787	\$7,787
Database Administrator IV	18	\$9,341	\$9,341
Manager IV	18	\$8,330	\$8,330
Subtotal, Salaries & Wages		\$41,294	\$41,294
Other Operating Expenses*		\$345	\$345
Retirement, OASI, Insurance (32.52%)		\$13,429	\$13,429
Agency payroll contribution		\$619	\$619
Indirect costs		\$5,123	\$5,123
Subtotal, Appropriated Cost		\$47,381	\$47,381
Subtotal, Unappropriated Cost		\$13,429	\$43,429
Total Cost		\$60,810	\$60,810

17 *Assumes AD&M work is conducted by telework staff.

18 **Contact:**

19 Fraud Deterrence and Compliance Monitoring – Jason Stalinsky

1 Sec. 212.006. RECOVERY OF BENEFITS PAID. (a) Benefits
2 paid to a claimant that are not in accordance with the final
3 decision shall be:

4 (1) refunded by the claimant to the commission; or
5 (2) in the discretion of the commission, deducted
6 from future benefits payable to the claimant under this
7 subtitle.

8 (b) Benefits paid that are not in accordance with the
9 final decision are also collectible in the manner provided by
10 Sections [213.031](#), [213.032](#), [213.033](#), [213.035](#), and [213.051](#) for the
11 collection of past due contributions.

12 **(b-1) Fraudulently obtained benefits and associated**
13 **penalties received and assessed per section 214.003 that are not**
14 **in accordance with the final decision are also collectible from**
15 **a financial institution in the manner provided by section**
16 **213.059. By rule, the Commission shall prescribe a base amount**
17 **which is exempt from levy to recover a benefit overpayment and**
18 **penalty imposed under section 214.003. Section 207.075(b) is not**
19 **applicable to benefits and penalties recovered under this**
20 **section.**

21 (c) The commission shall accept payment for benefits
22 refunded by a claimant under Subsection (a)(1) by personal
23 check, cashier's check, money order, debit card, electronic
24 check, or electronic funds transfer. The commission shall
25 accept payment through the mail and by Internet, as
26 applicable. The commission may adopt rules to accept forms of
27 payment not listed in this subsection.

28
29 **SECTION 2. Section 214.002, Labor Code, is amended to read**
30 **as follows:**

31 Sec. 214.002. LIABILITY FOR IMPROPERLY OBTAINING
32 BENEFITS. (a) A person who has received improper benefits is
33 liable for the amount of the improper benefits. The commission
34 may recover improper benefits by:

35 (1) deducting the amount of the improper benefits
36 from any future benefits payable to the person;

37 (2) collecting a refund from a claimant; or

38 (3) collecting the amount of the improper benefits
39 for the compensation fund in the same manner provided by
40 Sections [213.031](#), [213.032](#), [213.033](#), [213.035](#), and [213.051](#) for the
41 collection of past due contributions.

42 **(4) collecting fraudulently obtained benefits and**
43 **associated penalties received and assessed per section 214.003**
44 **that are not in accordance with the final decision are also**
45 **collectible from a financial institution in the manner provided**
46 **by section 213.059. By rule, the Commission shall prescribe a**
47 **base amount which is exempt from levy to recover a benefit**
48 **overpayment and penalty imposed under section 214.003. Section**

1 207.075(b) is not applicable to benefits and penalties recovered
2 under this subsection.

3 (b) In this section, "improper benefit" means the benefit
4 obtained by a person:

5 (1) because of the nondisclosure or misrepresentation
6 by the person or by another of a material fact, without regard
7 to whether the nondisclosure or misrepresentation was known or
8 fraudulent; and

9 (2) while:

10 (A) any condition imposed by this subtitle for
11 the person's qualifying for the benefit was not fulfilled in the
12 person's case; or

13 (B) the person was disqualified from receiving
14 benefits.

15 (c) The commission shall accept payment for benefits
16 refunded by a claimant under Subsection (a)(2) by personal
17 check, cashier's check, money order, debit card, electronic
18 check, or electronic funds transfer. The commission shall
19 accept payment through the mail and by Internet, as
20 applicable. The commission may adopt rules to accept forms of
21 payment not listed in this subsection.

22
23 The Texas Workforce Commission shall adopt rules for the
24 administration of Sections 212.066 and 214.002, Labor Code, as
25 amended by this Act.
26

1 **LEGISLATIVE RECOMMENDATION**

2 **Prohibition on Filing a New UI Claim Until Repayment**

3
4 **Program Affected:**

5 Unemployment Insurance

6 **Title:**

7 Prohibition on filing a new UI claim until repayment fraudulently received
8 benefit overpayments and associated penalties.

9 **Recommendation:**

10 Prevent an individual from filing a new, valid initial claim for unemployment
11 benefits until any previous fraudulent overpayments and penalties have
12 been repaid to TWC.

13 **Rationale:**

14 Under the Texas Labor Code, an individual that has committed fraud is not
15 precluded from filing a new claim for benefits as soon as their current benefit
16 year expires. This means an individual who has committed fraud is able to
17 file a new claim, and potentially commit fraud again, without repaying the
18 prior fraudulent overpayment. In most cases, this results in the individual's
19 current benefit payments being used to repay their previous fraud
20 overpayment.

21 This means that employer taxes from the individual's new base period are
22 repaying the individual's fraudulent overpayment. In essence, Texas
23 employers are financing an individual's fraudulent attempts to steal
24 unemployment benefits.

25 It is important that penalties be included in any proposed legislation.
26 Currently, an individual is not required to repay their 15% penalty prior to
27 filing a new claim. This amount is also exempted from benefit offset meaning
28 no incentive exists to repay the penalty.

29 Not only does this situation create a "revolving door" for fraud, where one
30 fraudulent claim pays off another, but it affects prosecutions as well. TWC's
31 Fraud Prosecutions Unit (FPU) will spend its resources building and referring
32 a case, only to have the amount of fraud reduced through benefit offsetting.
33 If the claimant files enough claim certifications that the amount of fraud is
34 reduced below the State Jail Felony (SJF) threshold, this can lead to the
35 prosecutor dismissing the case. Because most cases are referred as criminal
36 theft, most prosecutors are unwilling to pursue amounts TWC has already
37 recovered.

38 It should also be noted that requiring a claimant to repay fraudulently
39 obtained benefits or endure a penalty period in which they cannot file for
40 multiple years is common amongst unemployment systems in other states.

41

1 **Confidentiality to Federal UC Law**

2 Regional US Department of Labor staff reviewed the concept of this proposal
3 and raised no issues with respect to Federal-law conformity. We also note
4 that Arizona, Connecticut, Idaho, Maryland, Michigan, Montana, New
5 Hampshire, Ohio, and Utah appear to have a similar provision in their laws.

6 **Fiscal Impact:**

7 TWC anticipates a total five-year cost of \$55,597 that could be absorbed
8 using existing resources.

9

Position	FY 2024 hours	FY 2024 Cost	5-Year \$ Impact
Programmer V	350	\$20,550	\$20,550
Database Administrator IV	52.5	\$9,341	\$9,341
Manager IV	52.5	\$8,330	\$8,330
Subtotal, Salaries & Wages		\$38,221	\$38,221
Other Operating Expenses*		\$276	\$276
Retirement, OASI, Insurance (32.52%)		\$12,429	\$12,429
Agency payroll contribution		\$573	\$573
Indirect costs		\$4,098	\$4,098
Subtotal, Appropriated Cost		\$43,168	\$43,168
Subtotal, Unappropriated Cost		\$12,429	\$12,429
Total Technology Personnel Cost		\$55,597	\$55,597

10 *Assumes AD&M work done by telework staff.

11 Staff anticipates a potential positive cash flow to the unemployment
12 compensation fund through additional recoupment of overpaid benefits
13 currently not available under the statute. This would be from individuals who

1 voluntarily repay their fraudulent overpayment so that they would not be
2 prevented from filing an unemployment claim in the future.

3 Assumptions:

4 • The prohibition on filing a new initial claim only applies to unpaid
5 unemployment benefit overpayments, and penalties, that are due to
6 fraud. Any non-fraud overpayment is not included.

7 • This applies to new Initial Claims after the bill is effective.

8 • Believe new provisions could be seamlessly rolled into the UI
9 Modernization efforts

10 **Contact:**

11 Fraud Deterrence and Compliance Monitoring – Jason Stalinsky

1 Sec. 207.021. Benefit Eligibility Conditions

2 (a) Except as provided by Chapter 215, an unemployed individual
3 is eligible to receive benefits for a benefit period if the
4 individual:

5 (1) has registered for work at an employment office and has
6 continued to report to the employment office as required
7 by rules adopted by the commission;

8 (2) has made a claim for benefits under Section 208.001;

9 (3) is able to work;

10 (4) is available for work;

11 (5) is actively seeking work in accordance with rules
12 adopted by the commission;

13 (6) for the individual's base period, has benefit wage
14 credits:

15 (A) in at least two calendar quarters; and

16 (B) in an amount not less than 37 times the individual's
17 benefit amount;

18 (7) after the beginning date of the individual's most recent
19 prior benefit year, if applicable, earned wages in an
20 amount equal to not less than six times the individual's
21 benefit amount;

22 (8) has been totally or partially unemployed for a waiting
23 period of at least seven consecutive days; ~~and~~

24 (9) participates in reemployment services, such as a job
25 search assistance service, if the individual has been
26 determined, according to a profiling system established
27 by the commission, to be likely to exhaust eligibility
28 for regular benefits and to need those services to
29 obtain new employment, unless:

30 (A) the individual has completed participation in such
31 a service; or

32 (B) there is reasonable cause, as determined by the
33 commission, for the individual's failure to
34 participate in those services.

35 (10) has repaid any fraudulently obtained unemployment
36 compensation benefits and associated penalties received
37 and assessed per section 214.003.
38

1 **LEGISLATIVE RECOMMENDATION**

2 **Increasing the 15% UI Fraud Penalty**

3
4 **Program Affected:**

5 Unemployment Insurance

6 **Title:**

7 Increasing the 15% UI Fraud Penalty

8 **Recommendation:**

9 Amend Texas Labor Code §214.003 to add an additional fraud penalty to the
10 current 15% federally required penalty. It is recommended that proceeds
11 from this additional penalty would be placed into the Labor Code §203.202,
12 Special Administrative Fund (Fund 165). It is also recommended that
13 §203.202 be amended to allow for use of Fund 165 for fraud prevention.
14

15 **Rationale:**

16 When TWC administratively determines a claimant has committed eligibility
17 fraud under Labor Code §214.003, the claimant forfeits the right to the
18 fraudulently obtained benefits as well as any remaining benefits in the
19 claimant's benefit year. The claimant is also assessed a federally required
20 administrative penalty of 15% of the benefits fraudulently obtained. Federal
21 law requires this 15% penalty revenue to go into the unemployment trust
22 fund, however, any penalty assessed in excess of the 15% can be used at
23 the State's discretion.

24 This recommendation would provide a new revenue stream for TWC to
25 combat fraud and worker misclassification by funding additional staff and
26 new fraud fighting technology as well as other tools. During the pandemic
27 TWC was able to leverage federal fraud grants to cover additional staffing
28 and technology, however, this funding was one time and is not anticipated in
29 the future. An additional revenue stream would fill this gap.
30

31 Staff is still working on determining an appropriate penalty amount.
32

33 **Conformity to Federal Law:**

34 Staff anticipate no issues with respect to conformity to Federal law. Staff
35 also notes that only seven of the 52 jurisdictions reporting to the US
36 Department of Labor have only the minimum 15 percent penalty required by
37 Federal law. The remaining states and territories have additional penalty
38 requirements in their UC statutes.

39 **Fiscal Impact:**

1 TWC anticipates a total five-year cost of \$55,597. TWC anticipates costs
 2 associated with this bill can be absorbed using current resources. The IT
 3 estimate is 400+ programmer hours because this involves complex Revenue
 4 and Trust Management reporting, it affects Treasury Offset Program, and the
 5 current process was not originally built for expansion.
 6

Position	FY 2024 hours	FY 2024 Cost	5-Year \$ Impact
Programmer V	400+	\$20,550	\$20,550
Database Administrator IV	60	\$9,341	\$9,341
Manager IV	60	\$8,330	\$8,330
Other Operating Expenses *		\$276	\$276
Retirement, OASI, Insurance (32.52%)		\$12,429	\$12,429
Agency payroll contribution		\$573	\$573
Indirect costs		\$4,098	\$4,098
Subtotal, Appropriate Cost		\$43,168	\$43,168
Subtotal, Unappropriated Cost		\$12,429	\$12,429
Total Technology Personnel Cost		\$55,597	\$55,597

7 *Assumes AD&M work is conducted by telework staff.
 8

9 Staff anticipates an increase in resources available to the Agency for fraud
 10 deterrence activities which is funded by the perpetrators of fraud and by
 11 employers through their Federal unemployment taxes or State General
 12 Revenue.
 13

14 Assumptions:

- 15 • The total fraud penalty will be 50%. 15% is the federally mandated
 16 amount that is deposited to the unemployment compensation fund and
 17 35% is the additional penalty that is deposited to Fund 165 and used
 18 for fraud deterrence activities.
 19
- 20 • If the penalty amount is not repaid in full but rather incrementally, the
 21 funds will first go toward the 35% additional penalty that is deposited
 22 to Fund 165. Once the 35% penalty is repaid, additional penalty
 23 repayments will be attributable to the 15% federal amount that is
 24 deposited to the unemployment compensation fund.
 25

26 Based on a three-year average, the 35% penalty could result in an
 27 additional \$1.3 million per year in penalties, if applied only to the fraud

1 payments classified as “willful” weeks. However, if applied to both
 2 administrative and willful weeks, the additional 35% penalty increases to
 3 \$1.8 million that would be used for fraud deterrence activities. See chart for
 4 penalty amounts.
 5

Year	15% Penalty on Willful OP amount only	35% Penalty on Willful amount only	15% Penalty on both Admin and Willful amount	35% Penalty on both Admin & Willful amount
2019	\$529,347.00	\$1,235,143.00	\$720,971.55	\$1,682,267
2018	\$562,698.00	\$1,312,962.00	\$742,736.55	\$1,733,052
2017	\$678,455.85	\$1,583,063.65	\$857,107.95	\$1,999,919
3 Year Average	\$590,166.95	\$1,377,056.22	\$773,605.35	\$1,805,079.15

Year	Administrative OP amount	Willful OP amount
2019	\$ 1,277,497.00	\$ 3,528,980.00
2018	\$ 1,200,257.00	\$ 3,751,320.00
2017	\$ 1,191,014.00	\$ 4,523,039.00
3 Year Average	\$1,222,922.67	\$3,934,446.33

6
 7 *Note: Staff used a 3-year average because in 2015 and 2016, the fraud
 8 overpayment amounts are considerably higher and not representative of the
 9 normal work done by the department. During those years, staff were
 10 redirected to work on a large backlog of cases that had already been
 11 partially completed to the point that the first fraud vote was cast. Staff were
 12 redirected to working the backlog of “second vote” cases, which are quicker
 13 to complete and therefore the overpayment amounts are higher than a
 14 normal year. Used data from before the pandemic because fraud
 15 determinations decreased when staff were reassigned to processing the
 16 increased number of claims and handling other issues.

17
 18 **Contact:**

19 Fraud Deterrence and Compliance Monitoring – Jason Stalinsky

20

1 Sec. 214.003. Forfeiture or Cancellation of Benefits Paid and
2 Remaining Benefits; Penalty

3 a. If, by willful nondisclosure or misrepresentation of a
4 material fact, whether the nondisclosure or misrepresentation
5 is made by the person or for the person by another, a person
6 receives a benefit when a condition imposed by this subtitle
7 for the person's qualifying for the benefit is not fulfilled
8 or the person is disqualified from receiving the benefit:

9 1. the person forfeits the:

10 A. benefit received; and

11 B. rights to benefits that remain in the benefit
12 year in which the nondisclosure or
13 misrepresentation occurred; and

14 2. the commission shall require the person to pay a
15 penalty in an amount equal to ~~15~~50 percent of the amount
16 forfeited under Subdivision (1)(A).

17 b. If a person attempts to obtain or increase benefits by
18 a nondisclosure or misrepresentation as provided by
19 Subsection (a), the commission may cancel the person's right
20 to benefits that remain in the benefit year in which the
21 nondisclosure or misrepresentation occurred.

22 (b-1) If the commission is able to ascertain the identity of a
23 person or persons who intentionally or knowingly make a
24 materially false statement or misrepresentation in order to
25 obtain benefits in the name of another person, the person or
26 persons forfeit the benefits received, the benefits are in
27 overpayment, and the commission shall require the person or
28 persons to pay a penalty in an amount equal to 50 percent of
29 the amount forfeited. Benefits forfeited and penalties
30 ordered under this section are subject to joint and several
31 liability.

32 c. A forfeiture, cancellation, or penalty imposed under
33 this section is effective only after the person has been
34 afforded an opportunity for a fair hearing before the
35 commission or its duly designated representative.

36 d. A person who is assessed a penalty by the commission
37 under Subsection (a)(2) is liable for the amount of the
38 penalty. The commission may collect the penalty in the same
39 manner as provided by Sections 212.006 (a)(1) and (d),
40 213.031, 213.032, 213.033, 213.035, 213.051, and
41 214.002(a)(2) and (4)~~213.051~~ for the collection of past-due
42 contributions and benefit overpayments.

43 1. The commission shall deposit 15 percent of a
44 penalty assessed under Subsection (a)(2) or (b-1) in the
45 unemployment compensation fund established under Section
46 203.021.

47 2. The commission shall deposit 35 percent of a
48 penalty assessed under Subsection (a)(2) or (b-1) in the
49 unemployment compensation special administration fund

1 established under Subchapter E, Chapter 203 for the
2 purposes described in section 203.202(a)(7).
3

4 Sec. 203.201. SPECIAL ADMINISTRATION FUND. (a) The
5 unemployment compensation special administration fund is a
6 special fund.

7 (b) The special administration fund consists of:

8 (1) all interest and penalties collected under this
9 subtitle, other than a penalty assessed under Section
10 214.003(a)(2) or (b-1) to be deposited per section
11 214.003(d)(1); and

12 (2) any amounts received under any surety bond for
13 losses sustained by the special administration fund.
14

15 Sec. 203.202. USE OF SPECIAL ADMINISTRATION
16 FUND. (a) Money in the special administration fund may be
17 spent in accordance with this subtitle and may be used:

18 (1) to pay the cost of reimbursing the benefit
19 account in the compensation fund for benefits paid to former
20 employees of this state that are based on service for this
21 state, and the cost of construction and purchase of buildings
22 and land necessary for that administration;

23 (2) in the administration of Chapters 51, 61, and
24 62;

25 (3) for payment of interest on advances from the
26 federal trust fund;

27 (4) as a revolving fund to cover expenditures that
28 are necessary and proper under this subtitle and for which
29 federal funds have been requested but not received, subject to
30 the charging of the expenditures against the federal funds when
31 received;

32 (5) to refund a penalty as provided by Section
33 203.203; and

34 (6) subject to the provisions of Chapter 2107,
35 Government Code, to pay persons who contract with the commission
36 to collect delinquent unemployment taxes, penalties, and
37 interest owed under this subtitle; and

38 (7) to cover expenditures related to fraud prevention
39 and investigation, misclassification of workers, and the
40 collection of fraudulently obtained benefits.

41 (b) Money in the special administration fund may not be
42 spent in any manner that would permit its substitution for, or a
43 corresponding reduction in, federal funds that would, in the
44 absence of that money, be available to finance expenditures for
45 the administration of this subtitle.

46 (c) The commission by a resolution entered in its minutes
47 may authorize to be charged against the special administration
48 fund any expenditure the commission considers proper in the
49 interest of good administration of this subtitle if the

1 resolution states that no other funds are available for the
2 expenditure.
3

1 **LEGISLATIVE RECOMMENDATION**

2 **Fraud Provisions for Identity (ID) Theft**

3
4 **Program Affected:**

5 Unemployment Insurance

6 **Title:**

7 Fraud Provisions for ID theft

8 **Recommendation:**

9 Modify Texas Labor Code Chapter 214 to create additional authority to issue
10 administrative fraud determinations for identity theft claims with penalty.

11 **Rationale:**

12 Labor Code §214.003 anticipates that the Agency knows the identity of the
13 individual that committed benefits fraud. In other words, the individual is
14 lying/misrepresenting or someone is lying/misrepresenting on their behalf to
15 obtain benefits they are not entitled to. This is clear because this section
16 focuses on whether a condition for receiving benefits has not been fulfilled
17 and allows for a fair hearing before benefits are forfeited. As a result, TWC
18 must treat cases of identity fraud as invalid claims rather than expressly
19 fraudulent. This means if TWC is able to identify the imposter, it has no
20 administrative recourse to penalize the imposter, only a criminal referral.

21 TWC is required to work with DOL-OIG on fraudulent schemes, and we are
22 grateful for their assistance as TWC does not have the ability to pursue
23 these schemes which typically cross state and international borders.

24 However, these determinations would prove beneficial in instances where
25 the imposter is ascertainable, particularly where an individual is involved.

26 An example would be a friend who assists an individual with filing for
27 unemployment benefits and steals the claimant's filing information in the
28 process. Often the friend will tell the claimant they did not receive benefits
29 even though the individual is qualified, but then continue to file and receive
30 benefits under false pretenses.

31 Considering the extraordinary amount of identity theft which took place with
32 CARES Act payments, many states have grappled with how to handle this
33 administratively.

34 This legislation will provide TWC with an additional administrative means to
35 stop identity fraudsters and put fraudsters on notice of the ramifications of
36 their actions. TWC would still seek prosecution when appropriate.

37 **Conformity to Federal Law:**

38 Staff anticipate no conformity issues to Federal law. Wisconsin UC law
39 contains a similar provision which we understand to be quite successful.

40
41 **Fiscal Impact:**

1 No fiscal implication to the State is anticipated. Staff will need to be trained
2 on the new law and how it should be administered. This analysis assumes
3 time spent training staff on the new provision can be absorbed within
4 current resources.

5 FDCM's Office of Investigations will be impacted by this proposal. Staff will
6 be able to issue an ID Theft determination against the individual who
7 committed fraud by filing a claim using someone else's ID. The fraud
8 determination and any resulting overpayment of benefits would be applied to
9 the fraudster and TWC would be able to pursue collection from the fraudster.

10 Additionally, staff anticipates a potential positive cash flow to the
11 unemployment compensation fund through additional recoupment of
12 overpaid benefits and penalties currently not available under the statute.
13 TWC is not able to calculate the amount of theft from the trust fund that we
14 would collect because we do not know how many fraudsters the agency
15 would be able to positively identify and how many of those would either
16 repay the stolen benefits and penalties to the state. FDCM will check with
17 DOL to determine if benefits could be offset from future filings from an
18 imposter claim. The agency also anticipates that ID theft administrative
19 fraud determinations could deter future imposter claims which would
20 positively impact the trust fund.

21 **Contact:**

22 Fraud Deterrence and Compliance Monitoring – Jason Stalinsky

23

1 Sec. 214.003. Forfeiture or Cancellation of Benefits Paid and
2 Remaining Benefits; Penalty

3 a. If, by willful nondisclosure or misrepresentation of a
4 material fact, whether the nondisclosure or misrepresentation
5 is made by the person or for the person by another, a person
6 receives a benefit when a condition imposed by this subtitle
7 for the person's qualifying for the benefit is not fulfilled
8 or the person is disqualified from receiving the benefit:

9 1. the person forfeits the:

10 A. benefit received; and

11 B. rights to benefits that remain in the benefit
12 year in which the nondisclosure or
13 misrepresentation occurred; and

14 2. the commission shall require the person to pay a
15 penalty in an amount equal to ~~15~~50 percent of the amount
16 forfeited under Subdivision (1) (A).

17 b. If a person attempts to obtain or increase benefits by
18 a nondisclosure or misrepresentation as provided by
19 Subsection (a), the commission may cancel the person's right
20 to benefits that remain in the benefit year in which the
21 nondisclosure or misrepresentation occurred.

22 (b-1) If the commission is able to ascertain the identity of a
23 person or persons who intentionally or knowingly make a
24 materially false statement or misrepresentation in order to
25 obtain benefits in the name of another person, the person or
26 persons forfeit the benefits received, the benefits are in
27 overpayment, and the commission shall require the person or
28 persons to pay a penalty in an amount equal to 50 percent of
29 the amount forfeited. Benefits forfeited and penalties
30 ordered under this section are subject to joint and several
31 liability.

32 c. A forfeiture, cancellation, or penalty imposed under
33 this section is effective only after the person has been
34 afforded an opportunity for a fair hearing before the
35 commission or its duly designated representative.
36

1 **LEGISLATIVE RECOMMENDATION**

2 **Redefine "Last Work" to Stop Fraud & Claim Abuse**

3
4 **Program Affected:**

5 Unemployment Insurance

6 **Title:**

7 Modify the Definition of Last Work for Initial Claims

8 **Recommendation:**

9 Amend Texas Labor Code §208.002 to define "last work" and "person for
10 whom the claimant last worked" to mean an employer with a liable TWC Tax
11 account.

12 **Rationale:**

13 TWC is required to investigate a claimant's job separation from their last
14 work when determining if the claimant is qualified for benefits. Texas Labor
15 code §208.002 defines last work as an employer with a liable TWC Tax
16 account, or an account under another state unemployment law, or an
17 employer for which the claimant worked 30 hours during a week.

18 The 82nd Legislature in 2011 amended the provisions of §208.002, based on
19 a TWC legislative recommendation, to add the 30-hour provision as an
20 integrity measure to prevent unscrupulous individuals from avoiding a
21 disqualifying job separation. Prior to 2011, the statute allowed any entity,
22 regardless of whether it was a covered employer or the duration of the work,
23 to serve as a claimant's last employer. Since that time, the evidence has
24 shown that the amendments were insufficient to close the loophole in the
25 statute.

26 The 30-hour element allows an opportunistic individual to "create" a new last
27 employer when they suspect the separation from their actual last employer
28 would be disqualifying. In some situations, an individual may work for a
29 person, such as their parent or a neighbor, for 30 hours prior to filing, then
30 state they were laid off due to lack of work. In other instances, the individual
31 may entirely fictionalize the employer so that their side of the story would be
32 the only evidence for TWC to consider. An individual must have at least one
33 liable employer in their base period to file a claim, and that employer would
34 have been vetted by TWC when setting up the tax account.

35 This loophole is exploited by individuals as well as imposters. Identity
36 imposters know that they can not only impersonate the individuals filing for
37 benefits, but also the last employer as well. Texas makes this easy for them
38 as they don't have to set up a tax account, instead they simply need to state
39 they worked 30 hours in one week for any (fictitious) person prior to being
40 laid off. The imposter would be in control of all responses to a claim with no
41 real employer to verify the employment for the SSN.

1 While the owner of the SSN may have other legitimate base period
 2 employers in the claim, those legitimate employers will not be contacted
 3 until after the claim has begun to pay, at least a month after the claim is
 4 filed. This situation is analogous to the large amount of fraud TWC
 5 experienced in the Pandemic Unemployment Assistance (PUA) program
 6 where TWC was unable to tie claimants to past employers and have full
 7 employer participation in the UI process.

8 PUA, while key to helping many thousands of Texans not covered by the
 9 traditional unemployment insurance program, was rife with fraud precisely
 10 because it disconnected benefit receipt from the linkage to an employer
 11 which has a vested interest in participating in the eligibility assessment
 12 process.

13 **Conformity to Federal Law:**

14 Staff anticipates no issues with respect for Federal-law conformity. The US
 15 Department of Labor (DOL) provides states significant latitude in the criteria
 16 that states use in determining which employer – or employers – are used
 17 when adjudicating a claimant’s last employer for claim eligibility purposes.

18 DOL does not include LEU provisions in its “Comparison of State
 19 Unemployment Laws,” so we reached out to other states to see how they
 20 determine the claimant’s last employer. In many cases, states have either a
 21 duration of work requirement or a percent of base period wages paid by the
 22 employer that aligns to that state’s definition of covered employment, i.e.
 23 the same effect as this proposal. Additionally, in those states which identify
 24 a percentage of base period wages, the state adjudicates each job
 25 separation if multiple base period employers have to be combined to reach
 26 that threshold.

27 **Fiscal Impact:**

28 TWC anticipates a total five-year cost of \$40,614. TWC anticipates costs
 29 associated with this bill can be absorbed using current resources.

30

Position	FY 2024 hours	FY 2024 Cost	5-Year \$ Impact
Programmer V	150	\$10,275	\$10,275
Database Administrator IV	22.5	\$9,341	\$9,341
Manager IV	22.5	\$8,330	\$8,330
Subtotal, Salaries & Wages		\$27,946	\$27,946
Other Operating Expenses*		\$207	\$207
Retirement, OASI, Insurance (32.52%)		\$9,088	\$9,088

Agency payroll contribution		\$419	\$419
Indirect costs		\$3,074	\$3,074
Subtotal, Appropriated Cost		\$31,646	\$31,646
Subtotal, Unappropriated Costs		\$9,088	\$9,088
Total Technology Personnel Cost		\$40,734	\$40,734

1 *Assumes AD&M work will be done by telework staff.

2 Assumptions:

- 3 • The definition for last work only applies to initial claims filed after the
4 bill is effective.
- 5 • To meet the definition of last work, the employer must have a liable
6 TWC Tax account or a liable account in the other state.

7 **Contact:**

8 Fraud Deterrence and Compliance Monitoring – Jason Stalinsky

1 Sec. 208.002. Initial Claim; Last Work
2 (a) When used in connection with an initial claim, "last work"
3 and "person for whom the claimant last worked" refers to ÷
4 ~~(1) the last person for whom the claimant actually worked,~~
5 ~~if the claimant worked for that person for at least 30~~
6 ~~hours during a week; or~~
7 ~~(2) the employer, as defined by Subchapter C, Chapter 201,~~
8 ~~or by the unemployment law of any other state,~~ for whom
9 the claimant last worked.
10
11 (b) The commission shall mail a notice of the filing of an initial
12 claim to the person for whom the claimant last worked before
13 the effective date of the initial claim. If the person for
14 whom the claimant last worked has more than one branch or
15 division operating at different locations, the commission
16 shall mail the notice to the branch or division at which the
17 claimant last worked.
18
19 (c) Mailing of a notice under this section to the correct address
20 of the person, branch, or division for which the claimant
21 last worked constitutes notice of the claim to the person.
22

1 **LEGISLATIVE RECOMMENDATION**

2 **Expand Participation in Claimant Reemployment Services**

3
4 **Programs Affected:**

5 Unemployment Insurance and Reemployment Services and Eligibility
6 Assessment (RESEA)

7 **Title:**

8 Amend the Texas Unemployment Compensation Act to Expand Participation
9 in Claimant Reemployment Services.

10 **Recommendation:**

11 Modify Texas Labor Code §207.021(a)(9) to expand claimant participation in
12 certain reemployment services, such as RESEA, regardless of the claimant's
13 'likely to exhaust benefits' score and allow flexibility for claimants to be
14 scheduled for successive RESEA services.

15 **Rationale:**

16 Labor Code §207.021 provides eligibility conditions for benefit payments.
17 Current §207.021(a)(9) requires an individual to participate in
18 reemployment services only if they are determined likely to exhaust benefits
19 according to the Commission's profiling system.

20
21 Expanding the pool of claimants participating in RESEA, regardless of their
22 profiling score, would provide more unemployed Texans with valuable
23 reemployment tools very early in their claim and soon after separating from
24 their previous employment. This would increase more claimants' likelihood to
25 return to work much sooner than they would have without receiving the
26 services.

27
28 In 2018, amendments to the Social Security Act permanently authorized the
29 RESEA program as part of Federal unemployment compensation law and
30 implemented several significant changes including formula-based funding
31 and a series of requirements intended to increase the use and availability of
32 evidence-based reemployment interventions and strategies. The permanent
33 RESEA program has four purposes:

- 34 1. Reduce UI duration through improved employment outcomes;
35 2. Strengthen UI program integrity;
36 3. Promote alignment with the vision of the Workforce Innovation and
37 Opportunity Act; and
38 4. Establish RESEA as an entry point to other workforce system partners.

1
2 Historically, RESEA targeted two populations: (1) UI claimants determined to
3 be most likely to exhaust benefits; and (2) former U.S. military
4 servicemembers receiving Unemployment Compensation for Ex-service
5 Member (UCX) benefits. The recent permanent RESEA authorization
6 continues to target services to UI claimants identified as likely to exhaust UI
7 benefits. However, provisions within the US Department of Labor’s (DOL)
8 annual appropriations have provided additional flexibility for states to target
9 **any recipients** of regular UI or UCX.

10
11 Ever since Congress established the RESEA program in Federal law, the US
12 Department of Labor (DOL) has communicated to state UC agencies that
13 they anticipate Congress’s objective to be universal participation in the
14 program for all claimants. This proposal would preemptorily conform the
15 Texas Unemployment Compensation Act to Federal law if mandatory RESEA
16 is ultimately required.

17
18 Texas’ current RESEA grant is \$16,860,815. That is a significant increase
19 since TWC began participating in the program. Over the past several Federal
20 budget cycles, Congress has added more and more funding to RESEA; as
21 such, we fully expect our RESEA grant to rise, perhaps exponentially. This
22 proposal eliminates barriers in State law to full claimant participation in the
23 RESEA and will allow the Agency and our Board partners to fully maximize
24 this critical funding source to assist claimants in their efforts to return to
25 meaningful employment as quickly as possible.

26 **Conformity to Federal Law**

27 Staff anticipates no conformity issues to Federal UC law. Options for
28 potential legislative language have been provided to the US Department of
29 Labor for their review and comment.

30 **Fiscal Impact:**

31 TWC anticipates a total five-year cost of \$43,335 which would be paid by
32 administrative funds provided by DOL already allocated through the RESEA
33 grant as discussed below.

34
35 Additionally, staff anticipates a potential positive cash flow to the
36 unemployment compensation fund through early reemployment of more
37 claimants. Additional trust fund savings could be realized by stopping
38 potentially fraudulent and ineligible claims early in the claims-taking cycle.

39
40 RESEA grants provided by USDOL allow for administrative funding for
41 activities related to the feedback loop for UI claims examiners to act on and
42 adjudicate eligibility issues identified through the RESEA meetings. These
43 costs associated to expanding access to RESEA for all UI claimants,

1 regardless of their likely-to-exhaust benefits score would be allowable grant
 2 expenditures to facilitate the RESEA program in Texas.
 3

Position	FY 2024 hours	FY 2024 Cost	5-Year \$ Impact
Programmer V	150	\$10,275	\$10,275
Database Administrator IV	22.5	\$9,341	\$9,341
Manager IV	22.5	\$8,330	\$8,330
Subtotal, Salaries & Wages		\$27,946	\$27,946
Retirement, OASI, Insurance (32.52%)		\$9,088	\$9,088
Agency payroll contribution		\$419	\$419
Indirect costs		\$3,161	\$3,161
Subtotal, Benefits & Indirect		\$12,668	\$12,668
Total Technology Personnel Cost	195	\$40,614	\$40,614
Total Other Costs (work space, computers, and similar ancillary expenses)		\$2,721	\$2,721
Total Anticipated Implementation Costs		\$43,335	\$43,335

4 *Note: Estimated costs are likely to increase because this estimate
 5 calculates salary costs using the 2021 (87th session) numbers as the 2023
 6 (88th session) costs have not yet been released.

7 **UI and Appellate Services (AS) Comments**

8 Currently, UI, Appellate Services (AS), and Workforce (WF) partner to
 9 ensure that TWC’s RESEA program meets current DOL requirements. A
 10 carefully tailored expansion of the population to target only those claimants
 11 most in need of RESEA services is supported by UI and AS, and the
 12 increased workload could be managed through existing resources. If the
 13 ultimate outcome of any legislation is 100% claimant participation,
 14 additional workload and cost would be placed upon both UI and AS. At the

1 claims-examiner level, that work is eligible for recovery through the RESEA
2 grant; AS work would be associated to the UI Grant.

3

4 UI and AS staff conducted research on CY2018 data, as that year is
5 considered to contain the most recent reliable profiling data. In CY2018, UI
6 saw approximately 20,000 adjudication assignments for missed orientations
7 from a total profiled population of approximately 125,000. This results in a
8 ratio of adjudications per RESEA claimant of 16%. Each adjudication takes
9 UI staff approximately 14 minutes to process, with one adjudicator FTE able
10 to process approximately 7,500 such adjudications per year. Regarding AS
11 impact, AS staff anticipates a 20% appeal rate for all adjudications adverse
12 to the claimant. Each Hearing Officer FTE is considered able to handle
13 approximately 1,500 hearings per year. As noted above, appellate work
14 related to RESEA determinations adverse to the claimant are not funded
15 through the RESEA grant.

16

17 Based on the data above, if RESEA were extended to 100% of the claimant
18 population for FY2024, an increase of approximately 680,000 RESEA
19 participants could occur (FY2024 claim projection less profiled RESEA
20 population). Such an increase would more than quadruple relevant
21 workloads in both UI and AS.

22

23 **Contact:**

24 Fraud Deterrence and Compliance Monitoring – Chuck Ross

25

1 Staff are currently vetting two proposed versions of statutory amendments
2 with DOL.

3 Sec. 207.021. BENEFIT ELIGIBILITY
4 CONDITIONS. (a) Except as provided by Chapter [215](#), an
5 unemployed individual is eligible to receive benefits for a
6 benefit period if the individual:

7 (9) participates in reemployment services, such as a
8 job search assistance service, ~~if including but not limited to~~
9 ~~situations where~~ the individual has been determined, according
10 to a profiling system established by the commission, to be
11 likely to exhaust eligibility for regular benefits and to need
12 those services to obtain new employment, unless:

13 ~~(A) the individual has completed participation~~
14 ~~in such a service; or~~

15 ~~(B) there is reasonable cause, as determined by~~
16 ~~the commission, for the individual's failure to participate in~~
17 ~~those services.~~

18 *****

21 Sec. 207.021. BENEFIT ELIGIBILITY
22 CONDITIONS. (a) Except as provided by Chapter [215](#), an
23 unemployed individual is eligible to receive benefits for a
24 benefit period if the individual:

25 (9) participates in reemployment services, such as a
26 job search assistance service, ~~if the individual has been~~
27 ~~determined, according to a profiling system established by the~~
28 ~~commission, to be likely to exhaust eligibility for regular~~
29 ~~benefits and to need those services to obtain new employment,~~
30 unless:

31 ~~(A) the individual has completed participation~~
32 ~~in such a service; or~~

33 ~~(B) there is reasonable cause, as determined by~~
34 ~~the commission, for the individual's failure to participate in~~
35 ~~those services.~~

36
37

1 **LEGISLATIVE RECOMMENDATION**

2 **CHILD LABOR APPEAL**

3 **Amend Texas Labor Code §51.033, Administrative Penalty in Child**
4 **Labor Cases**

5
6 **Program Affected:**

7 Child Labor/Appeals/Commission Appeals

8 **Title:**

9 Amend Texas Labor Code §51.033, Administrative Penalty in Child Labor
10 cases.

11 **Recommendation:**

12 Amend [Texas Labor Code §51.033 to add an additional level of appeal to the](#)
13 [Commission. Allow](#) TWC’s Labor Law Department’s Child Labor Unit (CLU) to
14 exercise this appeal authority to the Commission and for a Motion for
15 Rehearing. Doing so would be consistent with the appeals process for the
16 Wages claims Unemployment Insurance (UI) claims.

17 Additionally, clarify that administrative penalty authority under §51.033(a)
18 applies to sexually oriented businesses (SOBs) under Texas Labor code
19 §51.016.

20 **Rationale:**

21 *Appellate Authority*

22 Enforcement of Texas Labor code Chapter 51, Employment of Children, is
23 carried out by CLU. Under [§51.033](#), the Texas Legislature granted TWC the
24 authority to issue administrative penalties for child labor violations. When
25 CLU assesses a penalty, it issues a preliminary determination (PD) which
26 includes the amount of the penalty assessed. The penalized employer then
27 has 21 days from the date the PD is mailed to appeal. If an appeal is filed, a
28 hearing will be held by a hearing officer in TWC's Commission Appeals
29 department. After the hearing officer issues a decision, the employer may
30 file a motion for rehearing within 14 days or file for judicial review. Appeal
31 rights are limited to only the employer.

32 The Texas Legislature has tasked TWC with ensuring that a child is not
33 employed in an occupation or manner that is detrimental to the child's
34 safety, health, or well-being. TWC Child Labor penalties are a significant
35 enforcement tool for protecting the children of Texas. Currently, only one
36 hearing officer hears and issues decisions on child labor cases. CLU has no
37 ability to appeal that decision. This creates concerns as this can result in a
38 single hearing officer being in the position of de facto policy making for the
39 Commission, an authority expressly granted to the Commission under Texas
40 Labor code §301.0015(a)(1).

1 All TWC hearing officers are unbiased, however, if CLU has concerns with the
2 effects a child labor decision may have on its statutory and Agency duties, it
3 currently has no avenue to raise these concerns and seek redress as it has
4 no appellate authority. Providing an additional level of appeal and motion for
5 rehearing authority to the Commission, which CLU can exercise, would
6 obviate these concerns.

7 Such a process already exists in [Texas Labor Code, Chapter 212,](#)
8 [Unemployment Insurance Dispute Resolution](#) and [Texas Labor Code, Chapter](#)
9 [61, Subchapter D, Wage Claims](#) where lower level and higher-level appeal
10 rights exist for both parties. Replicating this process would be relatively
11 simple to integrate into the child labor penalty process as the Commission is
12 already set up to handle higher level appeals. Additionally, mirroring these
13 processes would also increase uniformity and add efficiencies to the process.

14 *SB 315 and 766*

15 During the 87th Texas Legislative Session, the Legislature passed, and the
16 Governor signed SB 315 and SB 766. As it pertains to TWC, these bills raised
17 the minimum age of employment at a sexually orientated business from 18
18 to 21 years of age. [Texas Labor Code §51.016, Sexually Oriented](#)
19 [Businesses](#), was updated to reflect this change. This change, however,
20 created uncertainties as it relates to TWC's administrative penalty authority
21 under §51.033.

22 [Texas Labor Code §51.002\(1\)](#) defines child as "an individual under 18 years
23 of age." Section 51.033 (a) states: "If the commission determines that a
24 person who employs a child has violated this chapter...the commission may
25 assess an administrative penalty...." Since §51.016 creates a violation for
26 employment of an individual below the age of 21, it is unclear under this
27 new legislation if TWC retains its previous authority to penalize an SOB who
28 employs an individual between the ages of 18 and 21. Therefore, a
29 modification is recommended to Texas Labor Code §51.033 to clarify that, in
30 addition to statutory criminal penalties, TWC may assess an administrative
31 penalty against an SOB that employs an individual below the age of 21.

32 CLU believes this is consistent with the intent of SB 315 and 766 as some
33 instances exist where a penalty would be appropriate rather than criminal
34 referrals such as minor documentation or record retention errors. In these
35 instances, it is unlikely there would be resources available for law
36 enforcement to prosecute, but the situation would be appropriate for a
37 penalty.

38 **Fiscal Impact:**

39 Staff anticipates that the proposed operations would be absorbed by existing
40 resources.

41 Costs: There are an average of 2,600 child labor cases per fiscal year with
42 an average of 100 cases ruled as a violation. Of those 100 violation cases,

1 approximately 23 percent are appealed by the employer, which equals 23
2 child labor appeals per year. (Avg taken from 2001-2019 data)

3 Based on a review of prior appeal decisions, the division estimates the Child
4 Labor Unit (CLU) would appeal approximately 20 decisions per year.

5 Each hearing takes an average of 3 hours to complete, which is an additional
6 60 hours of Hearing Officer work per year. (180 minutes * 20 additional AT
7 hearings = 3,600 mins/60 mins = 60 hrs)

8 Technology costs would be limited to those associated with mailings for
9 hearing notices and decisions. There is no technology impact for adding
10 another level of appeal as these are manually processed.

11 Note: In most instances, the Appeals Hearing office does not reverse the
12 violation but instead decreases the fine. The CLU would like the opportunity
13 to appeal the change.

14 **Contact:**

15 Misti Stirling, Fraud Deterrence and Compliance Monitoring

1 Sec. 51.033. ADMINISTRATIVE PENALTY. (a) ~~If the commission a~~
2 child labor investigator determines that a person who employs a child,
3 or individual restricted by section 51.016(b), has violated this
4 chapter or a rule adopted under this chapter, the ~~commission~~
5 investigator may assess an administrative penalty against that person
6 as provided by this ~~section~~ subchapter.

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

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

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

12 (2) the history of previous violations;

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

14 (4) efforts to correct the violation; and

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

16
17 ~~(d) 51.034. PRELIMINARY DETERMINATION ORDER. (a) If, after~~
18 ~~examination of a possible violation and the facts relating to that~~
19 ~~possible violation, the commission child labor investigator determines~~
20 ~~that a violation has occurred, the commission child labor investigator~~
21 ~~shall issue a preliminary determination order to the person charged~~
22 ~~with the violation. that states the facts on which determination is~~
23 ~~based, the fact that an administrative penalty is to be imposed, and~~
24 ~~the amount of the penalty.~~

25 ~~(e) Not later than the 14th day after the date the report is~~
26 ~~issued, the commission shall give written notice of the~~ (b) ~~The~~
27 ~~preliminary determination order shall state the facts on which the~~
28 ~~preliminary determination order is based, the occurrence of a to the~~
29 ~~person charged with the violation. The notice must include a brief~~
30 ~~summary of the alleged violation, the fact that an administrative~~
31 ~~penalty is to be imposed, and a statement of the amount of the~~
32 ~~recommended penalty and.~~

33 (c) The preliminary determination order must inform the person
34 that the person has a right to a hearing on the occurrence of the
35 violation, the amount of the penalty, or both the occurrence of the
36 violation and the amount of the penalty.

37 ~~(f) Not later than the 21st day after the date on which~~
38 ~~the~~ (d) The child labor investigator shall mail notice ~~is mailed, the~~
39 of the preliminary wage determination order to the person's last known
40 address, as reflected by commission records.

41
42 Sec. 51.0341. ESTABLISHMENT OF CHILD LABOR APPEAL
43 TRIBUNALS. (a) The commission shall establish one or more impartial
44 child labor appeal tribunals to hear and decide disputed preliminary
45 determination orders if the commission determines that establishment
46 of those tribunals is necessary to ensure prompt disposal of child
47 labor cases on appeal.

48 (b) Each child labor appeal tribunal shall be composed of a
49 salaried examiner appointed by the commission.

50
51 Sec. 51.0342. REDETERMINATION BY CHILD LABOR
52 INVESTIGATOR. (a) If the child labor investigator discovers an error
53 in connection with a preliminary determination order or discovers

1 additional information not previously available, the child labor
2 investigator, within the period specified in section 51.035, may
3 reconsider and reissue the preliminary determination order. An
4 investigator's reissued preliminary determination order voids and
5 replaces the order requiring correction.

6 (b) A reissued preliminary wage determination order becomes
7 final unless a party files an appeal from the reissued preliminary
8 determination order within the period specified in section 51.035. The
9 period to request an appeal shall begin on the date the examiner mails
10 the reissued preliminary determination order.

11
12 Sec. 51.035. REQUEST FOR HEARING ON PRELIMINARY ORDER. (a) A
13 person may ~~make a written request a hearing before a child labor~~
14 appeal tribunal to appeal a preliminary determination order made under
15 Section 51.034.

16 (b) ~~The request for a hearing on the occurrence of the~~
17 ~~violation, hearing must be made in writing not later than the 21st day~~
18 ~~after the date the child labor investigator mails the notice of the~~
19 ~~preliminary determination order.~~

20
21 Sec. 51.0351. PRELIMINARY ORDER FINAL IF HEARING NOT REQUESTED. If
22 the person does not request a hearing to appeal a preliminary
23 determination order within the period prescribed by Section 51.035,
24 the order becomes the final order of the commission for all purposes,
25 and the person is not entitled to judicial review of the order under
26 this subchapter.

27
28 Sec. 51.0352. PAYMENT REQUIRED IF HEARING NOT REQUESTED. (a) A
29 person that does not request a hearing within the period prescribed by
30 Section 51.035 to appeal a preliminary determination order shall pay
31 the ~~penalty amount of the penalty, or both the occurrence of the~~
32 ~~violation and the ordered to the commission not later than the 21st~~
33 ~~day after the date the commission mails notice of the order.~~

34 ~~(g) If the person requests a hearing, (b) Payment to the~~
35 ~~commission shall set a hearing and give constitutes payment to the~~
36 ~~employee for all purposes.~~

37
38 Sec. 51.0353. NOTICE; TIME FOR HEARING. (a) A notice ~~of~~
39 regarding an administrative hearing conducted under this subchapter
40 must be mailed by the hearing to the person wage claim appeal tribunal
41 not later than the 21st day after the date a request for the hearing
42 is received by the commission.

43 (b) As soon as practicable, but not later than the 45th day
44 after the date ~~the hearing~~ a notice is mailed, under Subsection (a),
45 the ~~commission tribunal~~ shall conduct the hearing.—The

46
47 Sec. 51.0354. HEARING PROCEDURES. (a) A hearing conducted
48 under this subchapter is subject to the ~~commission~~ rules and hearings
49 procedures used by the commission to determine a claim under Subtitle
50 A, Title 4, but in the determination of a claim for unemployment
51 compensation benefits.

52 (b) The hearing is not subject to Chapter [2001](#), Government
53 Code.—The hearings examiner shall issue a decision.

1
2 Sec. 51.0355. CONSIDERATION OF PRELIMINARY DETERMINATION
3 ORDER. The child labor appeal tribunal may modify, affirm, or rescind
4 a preliminary determination order.

5
6 ~~(h) If it is determined after the~~ Sec. 51.0356. ORDER AFTER
7 HEARING. After a hearing that a penalty may be imposed, the
8 ~~commission~~ child labor appeal tribunal shall enter a written order to
9 ~~that effect. for the payment of any penalty the child labor appeal~~
10 tribunal assesses.

11
12 Sec. 51.036. NOTICE AND FINALITY OF ORDER.

13 (a) ~~The commission~~ child labor appeal tribunal shall notify
14 mail to each party to the person in writing appeal notice of:

15 (1) the decision;

16 (2) the violation; and

17 (3) the amount of the any penalty imposed by mailing the
18 assessed.

19 (b) The notice shall be mailed to the person at the person's a
20 party's last known address, as reflected shown by commission records.

21 (c) The order of the child labor appeal tribunal becomes final
22 14 days after the date on which it is mailed unless reopened by the
23 child labor tribunal or a party to the decision initiates a further
24 appeal to the commission as provided by this subchapter.

25 Sec. 51.0361. REMOVAL OR TRANSFER OF CLAIM PENDING BEFORE CHILD LABOR
26 APPEAL TRIBUNAL. (a) The commission by order may remove to itself or
27 transfer to another child labor appeal tribunal the proceedings
28 pending before a child labor appeal tribunal.

29 (b) The commission promptly shall mail to the parties to the
30 proceedings a notice of the order under Subsection (a).

31 (c) A quorum of the commission shall hear a proceeding removed
32 to the commission under Subsection (a).

33
34 Sec. 51.0362. COMMISSION REVIEW OF CHILD LABOR APPEAL TRIBUNAL
35 ORDER. The commission may:

36 (1) on its own motion:

37 (A) affirm, modify, or set aside an order issued
38 under Section 51.036 on the basis of the evidence previously submitted
39 in the case; or

40 (B) direct the taking of additional evidence; or

41 (2) permit any of the parties affected by the order to
42 initiate a further appeal before the commission.

43
44 Sec. 51.0363. NOTICE OF COMMISSION ACTION. (a) The commission
45 shall mail to each party to the appeal under Section 51.0362 notice
46 of:

47 (1) the commission's decision;

48 (2) the violation;

49 (3) the amount of any penalty assessed; and

50 (4) the person's right to judicial review of the order.

51 (b) The notice shall be mailed to a party's last known address,
52 as shown by commission records.

1
2 Sec. 51.0364. FINALITY OF COMMISSION ORDER. An —The order of
3 the commission becomes final 14 days after the date of mailing, the
4 order is mailed unless, within 14 days after the before that date of:

5 (1) the mailing, the hearing is reopened by commission by
6 order reopens the appeal; or

7 (2) a party to the person appeal files a written motion
8 for rehearing.

9
10 ~~(i) The notice of the commission's order must include a statement~~
11 ~~of the right of the person to judicial review of the order.~~

12 Sec. 51.037. JUDICIAL REVIEW. (a) A party who has exhausted the
13 party's administrative remedies under this chapter, other (j) —Not
14 later than the a motion for rehearing, may bring a suit to appeal
15 the order.

16 (b) The suit must be filed not later than the 30th day after
17 the date the commission's final order is mailed., the person shall:

18 ~~(1) pay~~ (c) The commission must be made a defendant in the
19 amount suit.

20 (d) The suit must be brought in the county of the penalty;
21 person's residence. If the person is not a resident of this state,
22 the suit must be brought in the county in this state in which the
23 person has its principal place of business.

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

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

32 ~~(k) Within the 30-day period, a person who acts under Subsection~~
33 ~~(j)(3) may:~~

34 ~~(1) stay enforcement of the penalty by:~~

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

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

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

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

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

48 ~~(1) If the commission receives a copy of an affidavit under~~
49 ~~Subsection (k)(2), the commission may file with the court not later~~
50 ~~than the fifth day after the date the copy is received a contest~~
51 ~~to the affidavit. The court shall hold a hearing on the facts~~
52 ~~alleged in the affidavit as soon as practicable and shall stay the~~
53 ~~enforcement of the penalty on finding that the alleged facts are~~

1 true. The person who files an affidavit has the burden of proving
2 that the person is financially unable to pay the amount of the
3 penalty and to give a supersedeas bond.

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

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

9 1. ~~is instituted by bringing an action as provided by Subchapter
10 E, Chapter 212; and~~

11 ~~(e) An appeal under this subchapter is under the substantial
12 evidence rule being the standard of review. in the manner as applied
13 to an appeal from a final decision under Subtitle A, Title 4.~~

14 ~~(f) ~~(e)~~ If the court sustains the occurrence of the violation,
15 the court may uphold or reduce the amount of the penalty and order the
16 person to pay the full or reduced amount of the penalty. If the court
17 does not sustain the occurrence of the violation, the court shall
18 order that a penalty is not owed.~~

19 Sec. 51.038. PAYMENT TO COMMISSION; ESCROW PENDING REVIEW. (a) Not
20 later than the 30th day after the date a commission order becomes
21 final, the person required to pay a penalty shall:

22 (1) pay the amount to the commission; or

23 (2) if the person files a petition for judicial review in
24 a court of competent jurisdiction contesting the final order, send the
25 amount to the commission for deposit in an interest-bearing escrow
26 account.

27 ~~(p) (b) When the judgment of the court becomes final, the
28 court shall proceed under this subsection. If the person paid the
29 amount of the penalty and if that amount is reduced or is not upheld
30 by the court, the court shall order that the appropriate amount plus
31 accrued interest be remitted to the person. The rate of the interest
32 is the rate charged on loans to depository institutions by the New
33 York Federal Reserve Bank, and the interest shall be paid for the
34 period beginning on the date the penalty was paid and ending on the
35 date the penalty is remitted. If the person gave a supersedeas bond
36 and if the amount of the penalty is not upheld by the court, the court
37 shall order the release of the bond. If the person gave a supersedeas
38 bond and if the amount of the penalty is reduced, the court shall
39 order the release of the bond after the person pays the amount.~~

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

45 ~~(r) Sec. 51.0385. DEPOSIT OF PENALTY. A penalty collected
46 under this section shall be remitted to the comptroller for deposit in
47 the general revenue fund.~~

48
49
50 Sec. 51.034039. INJUNCTION: ATTORNEY GENERAL'S ACTION. The
51 attorney general may seek injunctive relief in district court against
52 an employer who repeatedly violates the requirements established by
53 this chapter relating to the employment of children.