

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

SENATE BILL NO. 367

By: Fair

AS INTRODUCED

An Act relating to labor; amending Section 10, Chapter 391, O.S.L. 1997, 40 O.S. 1991, Section 141.16, as amended by Section 1, Chapter 305, O.S.L. 1992, 165.7, as amended by Section 3, Chapter 263, O.S.L. 1993, 165.8, 165.9, and 467 (40 O.S. Supp. 1998, Sections 89, 141.16, and 165.7), which relate to protection of labor, Boiler and Pressure Vessel Safety Act, and amusement ride safety; increasing maximum amount of certain administrative fines; excepting certain parents from applicability of certain provisions relating to employment of their children; changing fund into which shop review fees are deposited; providing for use of shop review fees; authorizing assessment of certain administrative fine; stating maximum amount of fine; providing for deposit of fine; authorizing Commissioner of Labor or Commissioner's designee to allow costs and attorney's fees in certain actions; clarifying nature of certain liability insurance requirement; clarifying certain hearing process; authorizing certain increase in liability insurance requirement; standardizing punctuation and usage; clarifying references; eliminating gender preference; providing effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 10, Chapter 391, O.S.L. 1997 (40 O.S. Supp. 1998, Section 89), is amended to read as follows:

Section 89. A. It shall be the duty of the Commissioner of Labor to enforce the provisions of Section 71 et seq. of ~~Title 40 of the Oklahoma Statutes~~ this title.

B. 1. In addition to any other penalty prescribed by law, any person who is in violation of Section 71 et seq. of ~~Title 40 of the Oklahoma Statutes~~ this title shall be liable for an administrative fine, to be assessed by the Commissioner of Labor, of not more than

~~One Hundred Dollars (\$100.00)~~ Two Hundred Dollars (\$200.00) for each offense. The maximum administrative fine shall not exceed ~~One Thousand Dollars (\$1,000.00)~~ Two Thousand Dollars (\$2,000.00) for all related violations. All administrative fines collected pursuant to this section shall be deposited in the Department of Labor Revolving Fund, created pursuant to Section 141.19 of ~~Title 40 of the Oklahoma Statutes~~ this title.

2. In lieu of the penalty provided for in paragraph 1 of this subsection, the Commissioner or a representative of the Commissioner may issue a warning for a first offense to a person who is in violation of Section 71 et seq. of ~~Title 40 of the Oklahoma Statutes~~ this title. The warning shall cite the violation committed by the person and, where appropriate, state the time period in which the violation must be remedied.

C. After a violator is cited or fined for two unrelated offenses of failure to comply with the provisions of Section 71 et seq. of ~~Title 40 of the Oklahoma Statutes~~ this title, the Commissioner of Labor shall have the authority to issue cease and desist orders, in accordance with the rules of the Department of Labor, against the violator until such time as compliance with the provisions of Section 71 et seq. of ~~Title 40 of the Oklahoma Statutes~~ this title is met. Any order to cease and desist issued by the Commissioner may be enforced in district court. Upon application of the Commissioner, the district court may issue an injunction without bond for the purpose of enforcing this section.

D. The Commissioner of Labor shall assess and collect administrative fines incurred under subsection B of this section and, at the Commissioner's discretion, may remit, mitigate, or negotiate the fines. In determining the fine to be assessed, or the amount agreed upon in any negotiation, consideration shall be given to the appropriateness of the fine in light of the gravity of the violation and the extent to which the person charged has attempted

to remedy the consequences of the violation. Individual proceedings shall be conducted pursuant to the provisions of subsection E of this section.

E. For the purpose of determining ~~if~~ whether an administrative fine should be assessed, a hearing shall be conducted in accordance with the provisions of the Administrative Procedures Act, by a hearing officer designated by the Commissioner of Labor. A final order by the hearing officer may be appealed to the district court in the county in which the violation occurred pursuant to the provisions of the Administrative Procedures Act.

F. Section 71 et seq. of this title shall not apply to children working for a parent in any entity in which the parent holds at least ten percent (10%) equity.

SECTION 2. AMENDATORY 40 O.S. 1991, Section 141.16, as amended by Section 1, Chapter 305, O.S.L. 1992 (40 O.S. Supp. 1998, Section 141.16), is amended to read as follows:

Section 141.16 A. Schedule of Fees

1. Annual certificate of operation fee

- |   |          |
|---|----------|
| a. with manway state inspector                | \$ 50.00 |
| b. without manway state inspector             | \$ 25.00 |
| c. any size special - or owner/user inspector | \$ 25.00 |

Note: Only one certificate of operation fee per year may be charged; except an additional fee equal to the certificate of operation fee may be charged for witnessing a hydrostatic test required after repairs.

2. Other Fees

- |  |            |
|--|------------|
| a. hydrostatic test of steam pipeline per day  | \$ 150.00  |
| (for each additional half-day or part thereof) | \$ 75.00   |
| b. shop review                                 | \$1,250.00 |
| c. licensing fee                               | \$ 50.00   |
| d. certificate of competency fee               | \$ 15.00   |
| e. examination fee                             | \$ 50.00   |

f. boiler or pressure vessel inspection fee for  
certificate inspections by state inspectors \$ 100.00

B. Exemptions. All institutions owned or operated by the State of Oklahoma or its agencies or by any county, municipality or school district, and such institutions or agencies, and all owners or users of boilers or pressure vessels of historical significance as specified in subsection D of Section 141.5 of this title are exempt from the payment of any fees provided for herein.

C. Disposition of fees. The Commissioner of Labor shall account for and transfer all fees, except shop review fees, so received to the State Treasury to the credit of the General Revenue Fund together with a detailed report of same. Shop review fees shall be deposited to the Department of Labor Revolving Fund created pursuant to Section 141.19 of this title. The shop review fees shall be used for conducting shop reviews and for administrative costs pertaining thereto.

D. All fees shall be paid directly to the Department of Labor.

SECTION 3. AMENDATORY 40 O.S. 1991, Section 165.7, as amended by Section 3, Chapter 263, O.S.L. 1993 (40 O.S. Supp. 1998, Section 165.7), is amended to read as follows:

Section 165.7 A. The Commissioner of Labor shall enforce and administer the provisions of ~~this act~~ Section 165.1 et seq. of this title and in any case where a civil action may be brought for the collection of a wage claim, the Commissioner of Labor may provide for an administrative proceeding to determine the validity and enforce collection of the claim. The administrative proceeding shall be conducted according to the Administrative Procedures Act.

B. ~~In any case when the Commissioner has received~~ Upon receipt of a wage complaint, the Commissioner may seek collection ~~of such claim~~ through administrative proceedings in a manner provided in this section. The Commissioner may join in a single administrative proceeding any number of wage claims against the same employer. The

Commissioner shall serve upon the employer an order of determination directing the employer to pay to the Commissioner the amount of the wage claim and any penalty amounts. Service shall be made by regular mail to the employer's last-known address. The order of determination shall include:

1. A reference to the particular sections of the statutes or rules involved;

2. A short and concise statement of the basis for the amounts determined to be owed to each wage claimant;

3. A statement that the employer within twenty (20) days after receipt of the order of determination must pay in full the wage claim and any penalties assessed ~~on appeal to district court~~; and

4. A statement that unless a written request for ~~reconsideration~~ an administrative hearing is received by the Commissioner or the order is appealed to district court within the time specified, the order of determination shall become final.

C. Upon failure of the employer to pay the amount specified in the order of determination or to request ~~reconsideration~~ an administrative hearing or appeal to district court, the order of determination shall become final.

D. ~~A hearing~~ Hearings conducted pursuant to this section shall be held in accordance with the applicable provisions of the Administrative Procedures Act by the Commissioner or the Commissioner's designee. The Commissioner shall adopt rules for such hearing. In any hearing before the Commissioner's designee, the designee is authorized to issue the final order in the case.

E. Final administrative orders issued in a wage claim proceeding are subject to appeal pursuant to the Administrative Procedures Act.

F. When an order under this section becomes final by operation of law or an appeal, and the amount due is not paid within twenty (20) days after the order becomes final, the order may be recorded

with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the county clerk's lien record. The order may be collected as any other money judgment.

G. The remedies provided by Sections 165.1 through 165.11 of this title shall be additional to and not in substitution for and in no manner impair other remedies. Additionally, one or more individuals who are aggrieved by violation of any provision of Sections 165.1 through 165.11 of this title shall be entitled to bring an action in his, her, or their own name to enforce the provisions of such sections.

SECTION 4. AMENDATORY 40 O.S. 1991, Section 165.8, is amended to read as follows:

Section 165.8 A. It shall be a misdemeanor for any employer to violate any of the provisions of Sections 165.1 through 165.11 of this title.

B. In addition to any other penalty prescribed by law, any employer who is found liable for five or more claims for the non-payment of wages due in any consecutive twelve-month period may be assessed an additional administrative fine by the Commissioner of Labor or the Commissioner's designee of not less than the sum of the unpaid wages nor more than Ten Thousand Dollars (\$10,000.00) to be deposited in the General Revenue Fund.

SECTION 5. AMENDATORY 40 O.S. 1991, Section 165.9, is amended to read as follows:

Section 165.9 A. Action by an employee to recover unpaid wages and liquidated damages may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself, herself, or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and on behalf of all employees similarly situated for such wages. Any employee, or his

or her representative, shall have the power to settle and adjust his or her claim for unpaid wages.

B. ~~The~~ In any action brought under this section, the court in any action brought under this section or the Commissioner of Labor or the Commissioner's designee may, in addition to any judgment awarded to the plaintiff or plaintiffs, defendant or defendants, allow costs of the action, including costs or fees of any nature, and reasonable attorney's fees.

SECTION 6. AMENDATORY 40 O.S. 1991, Section 467, is amended to read as follows:

Section 467. No person shall operate an amusement ride unless at the time there exists a policy of insurance in an amount of not less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence insuring the owner or operator against liability for injury suffered by persons riding the amusement ride; provided, however, the Commissioner of Labor may, by rules adopted pursuant to the Administrative Procedures Act, require additional insurance up to One Million Dollars (\$1,000,000.00) for operations of a size or nature the Commissioner determines shall require additional insurance.

SECTION 7. This act shall become effective July 1, 1999.

SECTION 8. It being immediately necessary for the preservation of the public peace, health, and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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