

By: Pena

H.B. No. 2028

A BILL TO BE ENTITLED

AN ACT

relating to protecting public employees who refuse to perform an illegal act; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle A, Title 6, Government Code, is amended by adding Chapter 619 to read as follows:

CHAPTER 619. PROTECTION FOR REFUSAL TO PERFORM

ILLEGAL ACT

Sec. 619.001. DEFINITIONS. In this chapter:

(1) "Law" means:

(A) a state or federal statute;

(B) an ordinance of a local governmental entity;

or

(C) a rule adopted under a statute or ordinance.

(2) "Local governmental entity" means a political subdivision of the state, including a:

(A) county;

(B) municipality;

(C) public school district; or

(D) special-purpose district or authority.

(3) "Personnel action" means an action that affects a public employee's compensation, promotion, demotion, transfer, work assignment, or performance evaluation.

(4) "Public employee" means an employee or appointed

officer other than an independent contractor who is paid to perform services for a state or local governmental entity.

(5) "State governmental entity" means:

(A) a board, commission, department, office, or other agency in the executive branch of state government, created under the constitution or a statute of the state, including an institution of higher education as defined by Section 61.003, Education Code;

(B) the legislature or a legislative agency; or

(C) the Texas Supreme Court, the Texas Court of Criminal Appeals, a court of appeals, a state judicial agency, or the State Bar of Texas.

Sec. 619.002. RETALIATION PROHIBITED. A state or local governmental entity may not suspend or terminate the employment of, or take other adverse personnel action against, a public employee who refuses to perform an illegal act.

Sec. 619.003. RELIEF AVAILABLE TO PUBLIC EMPLOYEE. (a) A public employee whose employment is suspended or terminated or who is subjected to an adverse personnel action in violation of Section 619.002 is entitled to sue for:

(1) injunctive relief;

(2) actual damages;

(3) court costs; and

(4) reasonable attorney's fees.

(b) In addition to relief under Subsection (a), a public employee whose employment is suspended or terminated in violation of this chapter is entitled to:

1           (1) reinstatement to the employee's former position or  
2 an equivalent position;

3           (2) compensation for wages lost during the period of  
4 suspension or termination; and

5           (3) reinstatement of fringe benefits and seniority  
6 rights lost because of the suspension or termination.

7           (c) In a suit under this chapter against an employing state  
8 or local governmental entity, a public employee may not recover  
9 compensatory damages for future pecuniary losses, emotional pain,  
10 suffering, inconvenience, mental anguish, loss of enjoyment of  
11 life, and other nonpecuniary losses in an amount that exceeds:

12           (1) \$50,000, if the employing state or local  
13 governmental entity has fewer than 101 employees in each of 20 or  
14 more calendar weeks in the calendar year in which the suit is filed  
15 or in the preceding year;

16           (2) \$100,000, if the employing state or local  
17 governmental entity has more than 100 and fewer than 201 employees  
18 in each of 20 or more calendar weeks in the calendar year in which  
19 the suit is filed or in the preceding year;

20           (3) \$200,000, if the employing state or local  
21 governmental entity has more than 200 and fewer than 501 employees  
22 in each of 20 or more calendar weeks in the calendar year in which  
23 the suit is filed or in the preceding year; and

24           (4) \$250,000, if the employing state or local  
25 governmental entity has more than 500 employees in each of 20 or  
26 more calendar weeks in the calendar year in which the suit is filed  
27 or in the preceding year.

1        (d) If more than one subdivision of Subsection (c) applies  
2 to an employing state or local governmental entity, the amount of  
3 monetary damages that may be recovered from the entity in a suit  
4 brought under this chapter is governed by the applicable provision  
5 that provides the highest damage award.

6        Sec. 619.004. WAIVER OF IMMUNITY. A public employee who  
7 alleges a violation of this chapter may sue the employing state or  
8 local governmental entity for the relief provided by this chapter.  
9 Sovereign immunity is waived and abolished to the extent of  
10 liability for the relief allowed under this chapter for a violation  
11 of this chapter.

12        Sec. 619.005. BURDEN OF PROOF; PRESUMPTION; AFFIRMATIVE  
13 DEFENSE. (a) A public employee who sues under this chapter has the  
14 burden of proof, except that if the suspension or termination of, or  
15 adverse personnel action against, a public employee occurs not  
16 later than the 90th day after the date on which the employee refuses  
17 to perform an illegal act, the suspension, termination, or adverse  
18 personnel action is presumed, subject to rebuttal, to be because of  
19 the employee's refusal.

20        (b) It is an affirmative defense to a suit under this  
21 chapter that the employing state or local governmental entity would  
22 have taken the action against the employee that forms the basis of  
23 the suit based solely on information, observation, or evidence that  
24 is not related to the fact that the employee refused to perform an  
25 illegal act.

26        Sec. 619.006. LIMITATION PERIOD. Except as provided by  
27 Section 619.007, a public employee who seeks relief under this

chapter must sue not later than the 90th day after the date on which the alleged violation of this chapter:

(1) occurred; or

(2) was discovered by the employee through reasonable diligence.

Sec. 619.007. USE OF GRIEVANCE OR APPEAL PROCEDURES. (a) A public employee must initiate action under the grievance or appeal procedures of the employing state or local governmental entity relating to suspension or termination of employment or adverse personnel action before suing under this chapter.

(b) The employee must invoke the applicable grievance or appeal procedures not later than the 90th day after the date on which the alleged violation of this chapter:

(1) occurred; or

(2) was discovered by the employee through reasonable diligence.

(c) Time used by the employee in acting under the grievance or appeal procedures is excluded, except as provided by Subsection (d), from the period established by Section 619.006.

(d) If a final decision is not rendered before the 61st day after the date procedures are initiated under Subsection (a), the employee may elect to:

(1) exhaust the applicable procedures under Subsection (a), in which event the employee must sue not later than the 30th day after the date those procedures are exhausted to obtain relief under this chapter; or

(2) terminate procedures under Subsection (a), in

1 which event the employee must sue within the time remaining under  
2 Section 619.006 to obtain relief under this chapter.

3 Sec. 619.008. WHERE SUIT BROUGHT. (a) A public employee of  
4 a state governmental entity may sue under this chapter in a district  
5 court of the county in which the cause of action arises or in a  
6 district court of Travis County.

7 (b) A public employee of a local governmental entity may sue  
8 under this chapter in a district court of the county in which the  
9 cause of action arises or in a district court of any county in the  
10 same geographic area that has established with the county in which  
11 the cause of action arises a council of governments or other  
12 regional commission under Chapter 391, Local Government Code.

13 Sec. 619.009. CIVIL PENALTY. (a) A supervisor who in  
14 violation of this chapter suspends or terminates the employment of  
15 a public employee or takes an adverse personnel action against the  
16 employee is liable for a civil penalty not to exceed \$15,000.

17 (b) The attorney general or appropriate prosecuting  
18 attorney may sue to collect a civil penalty under this section.

19 (c) A civil penalty collected under this section shall be  
20 deposited in the state treasury.

21 (d) A civil penalty assessed under this section shall be  
22 paid by the supervisor and may not be paid by the employing  
23 governmental entity.

24 (e) The personal liability of a supervisor or other  
25 individual under this chapter is limited to the civil penalty that  
26 may be assessed under this section.

27 Sec. 619.010. NOTICE TO EMPLOYEES. (a) A state or local

1 governmental entity shall inform its employees of their rights  
2 under this chapter by posting a sign in a prominent location in the  
3 workplace.

4 (b) The attorney general shall prescribe the design and  
5 content of the sign required by this section. The sign may be  
6 combined with the sign required under Section 554.009.

7 Sec. 619.011. AUDIT OF STATE GOVERNMENTAL ENTITY AFTER  
8 SUIT. (a) At the conclusion of a suit that is brought under this  
9 chapter against a state governmental entity subject to audit under  
10 Section 321.013 and in which the entity is required to pay \$10,000  
11 or more under the terms of a settlement agreement or final judgment,  
12 the attorney general shall provide to the state auditor's office a  
13 brief memorandum describing the facts and disposition of the suit.

14 (b) Not later than the 90th day after the date on which the  
15 state auditor's office receives the memorandum required by  
16 Subsection (a), the auditor may audit or investigate the state  
17 governmental entity to determine any changes necessary to correct  
18 the problems that gave rise to the suit and shall recommend  
19 necessary changes to the Legislative Audit Committee, the  
20 Legislative Budget Board, and the governing board or chief  
21 executive officer of the entity involved. In conducting the audit  
22 or investigation, the auditor shall have access to all records  
23 pertaining to the suit.

24 SECTION 2. The change in law made by this Act applies only  
25 to a suspension of, termination of, or other adverse personnel  
26 action taken against a public employee that occurs on or after the  
27 effective date of this Act.

1           SECTION 3.   This Act takes effect September 1, 2003.