

BILL ANALYSIS

C.S.H.B. 3578
By: Rose
Civil Practices
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current trends and best practice standards in corporate governance, together with federal statute, are encouraging companies to establish anonymous and confidential channels for uncovering and addressing workplace problems. Ombudsman programs provide a means for employees to informally resolve concerns or disputes without resorting to costly and burdensome litigation. Ombudsman programs support employer compliance with state and federal legislation, foster ethical business practices, improve productivity and morale in the workplace, and enhance employer oversight and accountability.

Under current law, ombudsman programs have had only limited success in protecting the identity of parties, and confidential information, when subpoenaed to testify in a formal proceeding. And once employees realize that the ombudsman program can be forced to testify, they become reluctant to come forward, or to persist in addressing a problem. CSHB 3578 allows an ombudsman program to maintain the confidentiality of communications with employees and provides the legal right for ombudsman programs to withhold the identity of the complainant and protect confidential information, even in the face of a subpoena, unless disclosure is necessary to prevent an imminent threat of serious harm.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1: Title 7 of the Civil Practice and Remedies Code is amended by adding Chapter 160.

Section 160.001 defines employee, employer and investigation.

Section 160.002 authorizes an employer to establish an ombudsman program to provide alternative dispute resolution service. The program is authorized to provide information, facilitation, mediation, and conciliation guidance and assistance to help resolve workplace and organizational disputes and to permit employees and others to have confidential communications on issues of concern or conflict.

The bill provides that an ombudsman program: must be neutral and functionally independent; may not have the authority to make managerial decisions with regard to any issue brought to the program; may not be responsible for any essential business function of the employer; may not be staffed by employees who hold other positions with responsibility for any essential business function of the employer; may be staffed by employees of the employer but not by an officer or director of the employer; and must have direct access to the employer's senior management.

The bill prohibits the ombudsman program from having the authority: to receive notice of claims against the employer; to collect, assemble or maintain permanent information or records relating to confidential communications for the employer; or to conduct a formal investigation for the employer.

The bill requires an ombudsman program and the employer establishing the program to adequately publicize the existence, purpose, and limitations of the program and inform employees and others that communications with the program are confidential.

The bill requires an employer that establishes an ombudsman program to ensure that the program has procedures and facilities adequate to permit private access to the program's office and to preserve confidential communications. The program is required to adhere to generally accepted standards for organizational ombudsman programs to preserve confidentiality of communications.

Section 160.003 sets forth confidentiality provisions that only apply to an ombudsman program that meets the requirements of Section 160.002. The bill establishes that the following oral and written communications are confidential, privileged and not subject to discovery and prohibits these communications from being used as evidence in any judicial or administrative proceeding: communications between a staff member of the program and an employee or other person for the purpose of assisting with the resolution of a concern or complaint; and communications between staff members of the program for the purpose of assisting with the resolution of a concern or complaint.

The bill authorizes a staff member of an ombudsman program to voluntarily disclose confidential information if the staff member determines that disclosure is necessary to prevent an imminent threat of serious harm.

The bill establishes that information discovered or disclosed in violation of this chapter is not admissible as evidence in any proceeding or for any other purpose.

Section 160.004 provides that the confidentiality provisions of this chapter are in addition to any privilege or protections under statutory or common law.

Section 160.005 establishes that this chapter does not prevent: the discovery or admissibility of information that is otherwise discoverable; the disclosure of information for research or educational purposes in connection with a training or educational program of an ombudsman program if the identity of the parties and the specific issues from the confidential communication are not identifiable; or the preparation and disclosure of statistical summary reports organized by category of the issues presented if the summary is based on a sufficiently large number of issues so that the identity of the parties and the specific issues from the confidential communication are not identifiable.

SECTION 2: This act applies to a suit or administrative proceeding that commenced on or after September 1, 2007. A cause suit or administrative proceeding that commenced before September 1, 2007 is governed by the law in effect at the time the action accrued, and the former law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The Committee Substitute adds to Subsection (f) language that requires an ombudsman program to publicize its "purpose and limitations," in addition to the original bill's current language requiring the publication of the program's existence and requirement to inform employees and others that communications with the program are confidential.