

By: Naishtat

H.B. No. 2582

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting employer retaliation against certain employees who report abuse, neglect, or exploitation of an elderly or disabled person.

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

SECTION 1. Section 48.002(a)(8), Human Resources Code, is amended to read as follows:

(8) "Disabled person" means a person:

(A) with a mental, physical, or developmental impairment [~~disability~~] that limits [~~substantially impairs~~] the person's ability to:

(i) live alone;

(ii) perform activities of daily living;

(iii) perform personal care, as defined by Section 142.001, Health and Safety Code;

(iv) provide adequately for the person's care or protection; or

(v) report that the person has been abused, neglected, or exploited; and

(B) who is:

(i) [~~A~~] 18 years of age or older; or

(ii) [~~B~~] under 18 years of age and [~~who~~] has had the disabilities of minority removed.

SECTION 2. Subchapter B, Chapter 48, Human Resources Code,

1 is amended by adding Section 48.055 to read as follows:

2 Sec. 48.055. EMPLOYER RETALIATION PROHIBITED. (a) In this
3 section, "employee" means a person who provides services for
4 compensation. The term includes a contract laborer.

5 (b) An employer may not suspend or terminate the employment
6 of, or otherwise discriminate against, a person who in good faith:

7 (1) reports suspected abuse, neglect, or exploitation
8 of an elderly or disabled person to:

9 (A) any of the employer's supervisory personnel;

10 (B) any supervisory personnel of, or an operator
11 of, the facility in which the elderly or disabled person lives,
12 participates in programs or activities, or receives services;

13 (C) a state regulatory agency or protection and
14 advocacy system; or

15 (D) a law enforcement agency; or

16 (2) initiates or cooperates with an investigation or
17 proceeding by a governmental entity or a protection and advocacy
18 system entity relating to an allegation of abuse, neglect, or
19 exploitation of an elderly or disabled person.

20 (c) A person whose employment is suspended or terminated or
21 who is otherwise discriminated against in violation of this section
22 may sue for injunctive relief, damages, or both.

23 (d) A plaintiff who prevails in a suit under this section
24 may recover:

25 (1) actual damages, including damages for mental
26 anguish even if an injury other than mental anguish is not shown;

27 (2) exemplary damages under Chapter 41, Civil Practice

1 and Remedies Code, if the employer is a private employer;

2 (3) court costs; and

3 (4) reasonable attorney's fees.

4 (e) In addition to amounts recovered under Subsection (d), a
5 plaintiff who prevails in a suit under this section is entitled to:

6 (1) reinstatement to the person's former position or a
7 position that is comparable in terms of compensation, benefits, and
8 other conditions of employment;

9 (2) reinstatement of any fringe benefits and seniority
10 rights lost because of the suspension, termination, or
11 discrimination; and

12 (3) compensation for wages lost during the period of
13 suspension or termination.

14 (f) A public employee who alleges a violation of this
15 section may sue the employing state or local governmental entity
16 for the relief provided for by this section. Sovereign immunity is
17 waived and abolished to the extent of liability created by this
18 section. A person having a claim under this section may sue a
19 governmental unit for damages allowed by this section.

20 (g) In a suit under this section against an employing state
21 or local governmental entity, a plaintiff may not recover
22 compensatory damages for future pecuniary losses, emotional pain,
23 suffering, inconvenience, mental anguish, loss of enjoyment of
24 life, and other nonpecuniary losses in an amount that exceeds:

25 (1) \$50,000, if the employing state or local
26 governmental entity has fewer than 101 employees in each of 20 or
27 more calendar weeks in the calendar year in which the suit is filed

1 or in the preceding year;

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

6 (3) \$200,000, if the employing state or local
7 governmental entity has more than 200 and fewer than 501 employees
8 in each of 20 or more calendar weeks in the calendar year in which
9 the suit is filed or in the preceding year; and

10 (4) \$250,000, if the employing state or local
11 governmental entity has more than 500 employees in each of 20 or
12 more calendar weeks in the calendar year in which the suit is filed
13 or in the preceding year.

14 (h) If more than one subdivision of Subsection (g) applies
15 to an employing state or local governmental entity, the amount of
16 monetary damages that may be recovered from the entity in a suit
17 brought under this section is governed by the applicable provision
18 that provides the highest damage award.

19 (i) A plaintiff suing under this section has the burden of
20 proof, except that there is a rebuttable presumption that the
21 plaintiff's employment was suspended or terminated or that the
22 plaintiff was otherwise discriminated against for reporting
23 suspected abuse, neglect, or exploitation if the suspension,
24 termination, or discrimination occurs before the 61st day after the
25 date on which the person made a report in good faith.

26 (j) A suit under this section may be brought in a district or
27 county court of the county in which:

1 (1) the plaintiff was employed by the defendant; or

2 (2) the defendant conducts business.

3 (k) It is an affirmative defense to a suit under Subsection
4 (c) that an employer would have taken the action against the
5 employee that forms the basis of the suit based solely on
6 information, observation, or evidence that is not related to the
7 fact that the employee reported suspected abuse, neglect, or
8 exploitation of an elderly or disabled person or initiated or
9 cooperated with an investigation or proceeding relating to an
10 allegation of abuse, neglect, or exploitation of an elderly or
11 disabled person.

12 (l) A public employee who has a cause of action under
13 Chapter 554, Government Code, based on conduct described by
14 Subsection (b), may not bring an action based on that conduct under
15 this section.

16 (m) This section does not apply to a person who reports the
17 person's own abuse, neglect, or exploitation or who initiates or
18 cooperates with an investigation or proceeding by a governmental
19 entity or a protection and advocacy system entity relating to an
20 allegation of the person's own abuse, neglect, or exploitation.

21 SECTION 3. This Act applies only to a report of suspected
22 abuse, neglect, or exploitation of an elderly or disabled person
23 that is made on or after the effective date of this Act. A report of
24 suspected abuse, neglect, or exploitation of an elderly or disabled
25 person that is made before that date is governed by the law in
26 effect on the date the report was made, and the former law is
27 continued in effect for that purpose.

1 SECTION 4. This Act takes effect September 1, 2007.