

By: Wentworth

S.B. No. 160

A BILL TO BE ENTITLED

AN ACT

relating to the confidentiality of certain communications involving an ombudsman program established by an employer as an alternative dispute resolution service.

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

SECTION 1. Title 7, Civil Practice and Remedies Code, is amended by adding Chapter 160 to read as follows:

CHAPTER 160. OMBUDSMAN PROGRAM ESTABLISHED BY EMPLOYER

Sec. 160.001. DEFINITIONS. In this chapter:

(1) "Employee" means a person employed by an employer.

(2) "Employer" means a person who employs at least one employee. The term does not include a state agency, political subdivision, or other public entity or instrumentality.

(3) "Investigation" means an inquiry conducted for an employer, the purpose of which is to make an official factual determination or an official disposition or decision.

Sec. 160.002. ESTABLISHMENT OF OMBUDSMAN PROGRAM. (a) An employer may establish an ombudsman program to provide an alternative dispute resolution service. The program may provide information, facilitation, mediation, and conciliation guidance and assistance to:

(1) help employees resolve workplace disputes; and

(2) permit employees and other persons who interact with employees to have confidential communications on issues of

1 concern or conflict, including allegations of organizational  
2 misconduct.

3 (b) An ombudsman program established under this chapter by  
4 an employer:

5 (1) must be neutral and functionally independent from  
6 any other program administered by the employer;

7 (2) may not have the authority to make managerial  
8 decisions with regard to any issue brought to the program;

9 (3) may not be responsible for any essential business  
10 function of the employer, including operations, compliance, human  
11 resources, or equal employment opportunity;

12 (4) may not be staffed by employees who hold other  
13 positions with responsibility for any essential business function  
14 of the employer, including operations, compliance, human  
15 resources, or equal employment opportunity;

16 (5) may be staffed by employees of the employer but not  
17 by an officer or director of the employer; and

18 (6) must have direct access to the employer's senior  
19 management.

20 (c) An ombudsman program may not have authority to receive  
21 notice of claims against the employer.

22 (d) An ombudsman program may not have authority to conduct a  
23 formal investigation for the employer.

24 (e) An ombudsman program and the employer establishing the  
25 program shall adequately publicize the existence of the program and  
26 inform employees that communications with the program are  
27 confidential.

1       (f) An employer that establishes an ombudsman program under  
2 this chapter shall ensure that the program has procedures and  
3 facilities adequate to permit private access to the program's  
4 office and to preserve confidential communications. The program  
5 shall adhere to generally accepted standards for organizational  
6 ombudsman programs to preserve confidentiality of communications.

7       Sec. 160.003. CONFIDENTIALITY PROVISIONS. (a) This  
8 section applies only to an ombudsman program that meets the  
9 requirements of Section 160.002.

10       (b) The following oral and written communications are  
11 confidential, privileged, not subject to discovery, and may not be  
12 used as evidence in any judicial or administrative proceeding:

13               (1) communications between a staff member of the  
14 program and an employee or other person for the purpose of assisting  
15 with the informal and expeditious resolution of a concern or  
16 complaint; and

17               (2) communications between staff members of the  
18 program for the purpose of assisting with the informal and  
19 expeditious resolution of a concern or complaint.

20       (c) Notwithstanding Subsection (b), a staff member of an  
21 ombudsman program may voluntarily disclose confidential  
22 information if the staff member determines that disclosure is  
23 necessary to prevent an imminent threat of serious harm.

24       (d) Information discovered or disclosed in violation of  
25 this chapter is not admissible as evidence in any proceeding or for  
26 any other purpose.

27       Sec. 160.004. APPLICATION OF OTHER LAW. The

1 confidentiality provisions of this chapter are in addition to any  
2 privilege or protection under statutory or common law, including  
3 Section 154.073, the attorney-client privilege, and the attorney  
4 work product privilege.

5 Sec. 160.005. ADMISSIBILITY OF OTHER INFORMATION. This  
6 chapter does not prevent:

7 (1) the discovery or admissibility of information that  
8 is otherwise discoverable;

9 (2) the disclosure of information for research or  
10 educational purposes in connection with a training or educational  
11 program of an ombudsman program if the identity of the parties and  
12 the specific issues from the confidential communication are not  
13 identifiable; or

14 (3) the preparation and disclosure of statistical  
15 summary reports organized by category of the issues presented if  
16 the summary is based on a sufficiently large number of issues so  
17 that the identity of the parties and the specific issues from the  
18 confidential communication are not identifiable.

19 SECTION 2. The change in law made by this Act with regard to  
20 the confidentiality of communications applies only to a suit or  
21 administrative proceeding commenced on or after the effective date  
22 of this Act. A suit or administrative proceeding commenced before  
23 the effective date of this Act is governed by the law in effect on  
24 the date the suit or proceeding was commenced, and the former law is  
25 continued in effect for that purpose.

26 SECTION 3. This Act takes effect September 1, 2007.