

BILL ANALYSIS

H.B. 486
By: Menendez
Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, an employee of a child-care facility is not fully protected from retaliation by an employer if the employee reports a violation of law witnessed in the workplace. As a result, an employee who witnesses a violation by the employer or another employee might hesitate to report the incident to the proper authorities out of a fear of retribution in the form of termination, suspension, or other retaliation.

Measures need to be taken to eliminate the fear of retribution in the hopes that any violation of law adversely affecting children in a child-care facility will be reported without delay.

H.B. 486 provides protection from retaliation for an employee of a child-care facility who reports illegal conduct that occurs within such a facility by providing the employee with a clearly defined cause of action.

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

H.B. 486 amends the Human Resources Code to create a cause of action for a person who is employed by or provides services for a child-care facility for compensation against the facility, or the owner or another employee of the facility, that suspends or terminates the employment of the person or otherwise disciplines, discriminates against, or retaliates against the person for reporting a violation of law to the person's supervisor, an administrator of the child-care facility, a state regulatory agency, or a law enforcement agency or for initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the child-care facility. The bill defines "employee" for purposes of the bill's provisions.

H.B. 486 authorizes a petitioner in such a case to recover the greater of \$1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown, and damages for lost wages if the petitioner's employment was suspended or terminated, as well as exemplary damages, court costs, and reasonable attorney's fees; additionally, the bill entitles a petitioner whose employment is suspended or terminated to appropriate injunctive relief, including, if applicable, reinstatement in the person's former position and reinstatement of lost fringe benefits or seniority rights. The bill requires the petitioner to bring suit or notify the Texas Workforce Commission of the petitioner's intent to sue not later than the second anniversary of the date the person is adversely affected by the employer's action and requires a petitioner who notifies the commission of the intent to sue to bring suit not later than the 90th day after the date the notice is delivered to the commission. The bill requires the commission, on receipt of the notice, to notify the child-care facility of the petitioner's intent to bring suit.

H.B. 486 provides that the petitioner has the burden of proof in the suit, except that there is a rebuttable presumption that the person's employment was adversely affected for reporting abuse or neglect if the adverse action was taken on or before the 60th day after the date the person reported in good faith. The bill authorizes such a suit to be brought in the district court of the county in which the petitioner resides, the petitioner was employed by the defendant, or the defendant conducts business. The bill requires each child-care facility to require each employee, as a condition of employment, to sign a statement that the employee understands the employee's rights to bring suit for the retaliatory actions described in these provisions.

EFFECTIVE DATE

September 1, 2009.