

By: Menendez

H.B. No. 486

A BILL TO BE ENTITLED

AN ACT

relating to retaliation against employees of a child-care facility.

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

SECTION 1. Subchapter C, Chapter 42, Human Resources Code, is amended by adding Section 42.064 to read as follows:

Sec. 42.064. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a)

In this section, "employee" means a person who is an employee of a child-care facility or any other person who provides services for a child-care facility for compensation.

(b) An employee has a cause of action against a child-care facility, or the owner or another employee of a child-care facility, that suspends or terminates the employment of the person or otherwise disciplines, discriminates against, or retaliates against the employee for:

(1) reporting to the employee's supervisor, an administrator of the child-care facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter or a rule adopted under this chapter; or

(2) initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the child-care facility.

(c) The petitioner may recover:

(1) the greater of \$1,000 or actual damages, including damages for mental anguish even if an injury other than mental

1 anguish is not shown, and damages for lost wages if the petitioner's
2 employment was suspended or terminated;

3 (2) exemplary damages;

4 (3) court costs; and

5 (4) reasonable attorney's fees.

6 (d) In addition to the amounts that may be recovered under
7 Subsection (c), a person whose employment is suspended or
8 terminated is entitled to appropriate injunctive relief,
9 including, if applicable:

10 (1) reinstatement in the person's former position;

11 and

12 (2) reinstatement of lost fringe benefits or seniority
13 rights.

14 (e) Not later than the second anniversary of the date the
15 person's employment is suspended or terminated, or the person is
16 otherwise subjected to discipline, discrimination, or retaliation,
17 the petitioner must bring suit or notify the Texas Workforce
18 Commission of the petitioner's intent to sue under this section. A
19 petitioner who notifies the commission under this subsection must
20 bring suit not later than the 90th day after the date the notice is
21 delivered to the commission. On receipt of the notice, the
22 commission shall notify the child-care facility of the petitioner's
23 intent to bring suit under this section.

24 (f) The petitioner has the burden of proof in a suit brought
25 under this section, except that there is a rebuttable presumption
26 that the person's employment was suspended or terminated or the
27 person was otherwise subjected to discipline, discrimination, or

1 retaliation for reporting abuse or neglect if the adverse action
2 was taken on or before the 60th day after the date the person
3 reported in good faith.

4 (g) A suit under this section may be brought in the district
5 court of the county in which:

6 (1) the petitioner resides;

7 (2) the petitioner was employed by the defendant; or

8 (3) the defendant conducts business.

9 (h) Each child-care facility shall require each employee of
10 the child-care facility, as a condition of employment with the
11 child-care facility, to sign a statement that the employee
12 understands the employee's rights under this section.

13 SECTION 2. Section 42.064, Human Resources Code, as added
14 by this Act, applies only to an employee who is suspended,
15 terminated, or otherwise subjected to discipline, discrimination,
16 or retaliation on or after the effective date of this Act.

17 SECTION 3. This Act takes effect September 1, 2009.