

By: Rose

H.B. No. 4377

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the confidentiality of certain communications
3 involving an ombudsman program established by an employer as an
4 alternative dispute resolution service.

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

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

8 CHAPTER 160. OMBUDSMAN PROGRAM ESTABLISHED BY EMPLOYER

9 Sec. 160.001. DEFINITIONS. In this chapter:

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

11 (2) "Employer" means a person who employs at least one
12 employee.

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

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

21 (1) help employees and others resolve workplace and
22 organizational disputes; and

23 (2) permit employees and other persons to have
24 confidential communications on issues of concern or conflict,

1 including allegations of misconduct.

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

4 (1) must be neutral and functionally independent;

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

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

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

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

16 (6) must have direct access to the employer's senior
17 management.

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

20 (d) An ombudsman program may not have authority to collect,
21 assemble, or maintain permanent information or records relating to
22 confidential communications for the employer.

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

25 (f) An ombudsman program and the employer establishing the
26 program shall adequately publicize the existence, purpose, and
27 limitations of the program and inform employees and others that

1 communications with the program are confidential.

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

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

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

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

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

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

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

1 Sec. 160.004. APPLICATION OF OTHER LAW. The
2 confidentiality provisions of this chapter are in addition to any
3 privilege or protection under statutory or common law, including
4 Section 154.073, the attorney-client privilege, and the attorney
5 work product privilege.

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

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

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

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

20 Sec. 160.006. APPLICATION OF CHAPTER. (a) This chapter
21 does not apply to an ombudsman program or other alternative dispute
22 resolution service established by an employer unless the program or
23 service provides expressly in writing that this chapter applies to
24 the program or service.

25 (b) This chapter does not prevent an employer from
26 establishing an ombudsman program or other alternative dispute
27 resolution service that is not subject to this chapter.

1 SECTION 2. The change in law made by this Act with regard to
2 the confidentiality of communications applies only to a suit or
3 administrative proceeding commenced on or after the effective date
4 of this Act. A suit or administrative proceeding commenced before
5 the effective date of this Act is governed by the law in effect on
6 the date the suit or proceeding was commenced, and the former law is
7 continued in effect for that purpose.

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