

BILL ANALYSIS

H.B. 1178
By: Flynn
Defense & Veterans' Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There is concern that with the increased number of military deployments recently, it has been difficult and somewhat ineffective to handle, investigate, and force compliance with provisions of law relating to the termination of a permanent employee who is a member of the state military forces called to training or duty. H.B. 1178 seeks to address these concerns by, among other provisions, establishing administrative review and judicial enforcement provisions relating to employment protection for members of the state military forces.

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. 1178 amends the Government Code, in provisions prohibiting a private employer from terminating the employment of a permanent employee who is a member of the state military forces called to training or duty, to remove language limiting application to private employers and to permanent employees. The bill makes a violation of these provisions an unlawful employment practice and authorizes a person injured by a violation to file a complaint with the Texas Workforce Commission civil rights division. The bill removes provisions relating to damages to which a person injured by a violation is entitled, to an employer's defense to an action for damages, and to an employer's delay or attempt to defeat a reemployment obligation. The bill defines "employee," "employer," and "political subdivision" by reference to the Labor Code for purposes of provisions relating to the state militia.

H.B. 1178 establishes a process for administrative review by the Texas Workforce Commission civil rights division of complaints alleging violations of the reemployment protection for members of the state militia. The bill sets forth provisions relating to the filing of a complaint, use of alternative dispute resolution, investigation of a complaint by the commission, dismissal of a complaint, determination of reasonable cause, resolution of a complaint by informal methods, notice of dismissal or failure to resolve a complaint, petition for temporary injunctive relief, and civil action by the commission or by the complainant. The bill requires a court to set an action for hearing at the earliest practicable date and authorizes a court to: issue an injunction and order additional equitable relief; award compensatory and punitive damages, not to exceed certain amounts; and allow the prevailing party reasonable attorney's fees and costs. The bill authorizes a party to the action or the commission to commence proceedings to compel compliance with a court order if an employer fails to comply with the order. The bill specifies that a judicial proceeding under the bill's provisions is a trial de novo and that a commission finding, recommendation, determination, or other action is not binding on a court. The bill defines "commission," "complainant," and "respondent."

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.