

By: Flynn

H.B. No. 1178

A BILL TO BE ENTITLED

AN ACT

relating to employment protection for members of the state military forces.

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

SECTION 1. Section 431.001, Government Code, is amended by adding Subdivisions (5), (6), and (7) to read as follows:

(5) "Employee" has the meaning assigned by Section 21.002, Labor Code.

(6) "Employer" has the meaning assigned by Section 21.002, Labor Code.

(7) "Political subdivision" has the meaning assigned by Section 21.002, Labor Code.

SECTION 2. Section 431.006, Government Code, is amended to read as follows:

Sec. 431.006. REEMPLOYMENT OF PERSON CALLED TO TRAINING OR DUTY. (a) An [~~A private~~] employer may not terminate the employment of an [~~a permanent~~] employee who is a member of the state military forces of this state or any other state because the employee is ordered to authorized training or duty by a proper authority. The employee is entitled to return to the same employment held when ordered to training or duty and may not be subjected to loss of time, efficiency rating, vacation time, or any benefit of employment during or because of the absence. The employee, as soon as practicable after release from duty, must give

1 written or actual notice of intent to return to employment.

2 (b) A violation of this section is an unlawful employment
3 practice. A person injured by a violation of this section may file
4 a complaint with the Texas Workforce Commission civil rights
5 division under Subchapter K [~~is entitled to:~~

6 [~~(1) damages in an amount not exceeding six months'~~
7 ~~compensation at the rate at which the person was compensated when~~
8 ~~ordered to training or duty; and~~

9 [~~(2) reasonable attorney's fees approved by the~~
10 ~~court].~~

11 [~~(c) It is a defense to an action under this section that the~~
12 ~~employer's circumstances changed while the employee was in training~~
13 ~~or on duty to an extent that makes reemployment impossible or~~
14 ~~unreasonable. The employer has the burden of proving the~~
15 ~~impossibility or unreasonableness of reemploying the employee~~
16 ~~under the employer's changed circumstances.~~

17 [~~(d) An employer may not delay or attempt to defeat a~~
18 ~~reemployment obligation under this section by demanding~~
19 ~~documentation that does not exist or is not readily available at the~~
20 ~~time notice is given under Subsection (a).]~~

21 SECTION 3. Chapter 431, Government Code, is amended by
22 adding Subchapter K to read as follows:

23 SUBCHAPTER K. ADMINISTRATIVE REVIEW AND JUDICIAL ENFORCEMENT

24 Sec. 431.151. DEFINITIONS. In this subchapter:

25 (1) "Commission" means the Texas Workforce Commission
26 civil rights division.

27 (2) "Complainant" means an individual who brings an

1 action or proceeding under this subchapter.

2 (3) "Respondent" means the person charged in a
3 complaint filed under this subchapter.

4 Sec. 431.152. FILING OF COMPLAINT; FORM AND CONTENT;
5 SERVICE. (a) A person claiming to be aggrieved by an unlawful
6 employment practice under Section 431.006 or the person's agent may
7 file a complaint with the commission.

8 (b) The complaint must be in writing and made under oath.

9 (c) The complaint must state:

10 (1) that an unlawful employment practice under Section
11 431.006 has been committed;

12 (2) the facts on which the complaint is based,
13 including the date, place, and circumstances of the alleged
14 unlawful employment practice; and

15 (3) facts sufficient to enable the commission to
16 identify the respondent.

17 (d) The commission shall serve the respondent with a copy of
18 the perfected complaint not later than the 10th day after the date
19 the complaint is filed.

20 (e) A complaint may be amended to cure technical defects or
21 omissions, including a failure to verify the complaint or to
22 clarify and amplify an allegation made in the complaint.

23 (f) An amendment to a complaint alleging additional facts
24 that constitute an unlawful employment practice under Section
25 431.006 relating to or arising from the subject matter of the
26 original complaint relates back to the date the complaint was first
27 received by the commission.

1 Sec. 431.153. ALTERNATIVE DISPUTE RESOLUTION. The use of
2 alternative means of dispute resolution, including settlement
3 negotiations, conciliation, facilitation, mediation,
4 fact-finding, minitrials, and arbitration, is encouraged to
5 resolve disputes arising under Section 431.006. The settlement of
6 a disputed claim under this subchapter that results from the use of
7 traditional or alternative means of dispute resolution is binding
8 on the parties to the claim.

9 Sec. 431.154. INVESTIGATION BY COMMISSION. The commission
10 shall investigate a complaint arising under Section 431.006 and
11 determine if there is reasonable cause to believe that the
12 respondent engaged in an unlawful employment practice as alleged in
13 the complaint.

14 Sec. 431.155. LACK OF REASONABLE CAUSE; DISMISSAL OF
15 COMPLAINT. (a) If, after investigation, the commission
16 determines that reasonable cause does not exist to believe that the
17 respondent engaged in an unlawful employment practice under Section
18 431.006 as alleged in a complaint, the commission shall issue a
19 written determination incorporating the finding that the evidence
20 does not support the complaint and dismissing the complaint.

21 (b) The commission shall serve a copy of the determination
22 on the complainant, the respondent, and other agencies as required
23 by law.

24 Sec. 431.156. DETERMINATION OF REASONABLE CAUSE; REVIEW BY
25 PANEL. If, after investigation, the commission determines that
26 there is reasonable cause to believe that the respondent engaged in
27 an unlawful employment practice under Section 431.006 as alleged in

1 a complaint, the commission shall:

2 (1) issue a written determination incorporating the
3 finding that the evidence supports the complaint; and

4 (2) serve a copy of the determination on the
5 complainant, the respondent, and other agencies as required by law.

6 Sec. 431.157. RESOLUTION BY INFORMAL METHODS. (a) If a
7 determination of reasonable cause is made, the commission shall
8 endeavor to eliminate the alleged unlawful employment practice
9 arising under Section 431.006 by informal methods of conference,
10 conciliation, and persuasion.

11 (b) Without the written consent of the complainant and
12 respondent, the commission, its executive director, or its other
13 officers or employees may not disclose to the public information
14 about the efforts in a particular case to resolve an alleged
15 unlawful employment practice by conference, conciliation, or
16 persuasion, regardless of whether there is a determination of
17 reasonable cause.

18 Sec. 431.158. NOTICE OF DISMISSAL OR UNRESOLVED COMPLAINT.
19 If the commission dismisses a complaint or does not resolve the
20 complaint, the commission shall inform the complainant of the
21 dismissal or failure to resolve the complaint in writing by
22 certified mail.

23 Sec. 431.159. TEMPORARY INJUNCTIVE RELIEF. (a) If the
24 commission concludes from a preliminary investigation of an
25 unlawful employment practice arising under Section 431.006 alleged
26 in a complaint that prompt judicial action is necessary, the
27 commission shall file a petition seeking appropriate temporary

1 relief against the respondent pending final determination of a
2 proceeding under this subchapter.

3 (b) The petition shall be filed in a district court in a
4 county in which:

5 (1) the alleged unlawful employment practice that is
6 the subject of the complaint occurred; or

7 (2) the respondent resides.

8 (c) A court may not issue temporary injunctive relief unless
9 the commission shows:

10 (1) a substantial likelihood of success on the merits;
11 and

12 (2) irreparable harm to the complainant in the absence
13 of the preliminary relief pending final determination on the
14 merits.

15 Sec. 431.160. CIVIL ACTION BY COMMISSION. (a) The
16 commission may bring a civil action against a respondent if:

17 (1) the commission determines that there is reasonable
18 cause to believe that the respondent engaged in an unlawful
19 employment practice under Section 431.006; and

20 (2) the commission's efforts to resolve the
21 discriminatory practice to the satisfaction of the complainant and
22 respondent through informal methods have been unsuccessful.

23 (b) The complainant may intervene in a civil action brought
24 by the commission.

25 Sec. 431.161. NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL
26 ACTION. (a) A complainant who receives notice under Section
27 431.158 that the complaint is dismissed or not resolved is entitled

1 to request from the commission a written notice of the
2 complainant's right to file a civil action.

3 (b) The complainant must request the notice in writing.

4 (c) The executive director of the commission may issue the
5 notice.

6 (d) Failure of the executive director of the commission to
7 issue the notice of a complainant's right to file a civil action
8 does not affect the complainant's right under this subchapter to
9 bring a civil action against the respondent.

10 Sec. 431.162. CIVIL ACTION BY COMPLAINANT. Within 60 days
11 after the date a notice of the right to file a civil action is
12 received, the complainant may bring a civil action against the
13 respondent.

14 Sec. 431.163. COMMISSION'S INTERVENTION IN CIVIL ACTION BY
15 COMPLAINANT. After receipt of a timely application, a court may
16 permit the commission to intervene in a civil action filed under
17 Section 431.162 if:

18 (1) the commission certifies that the case is of
19 general public importance; and

20 (2) before commencement of the action, the commission
21 issued a determination of reasonable cause to believe that Section
22 431.006 was violated.

23 Sec. 431.164. ASSIGNMENT TO EARLY HEARING. The court shall
24 set an action brought under this subchapter for hearing at the
25 earliest practicable date to expedite the action.

26 Sec. 431.165. INJUNCTION; EQUITABLE RELIEF. (a) On
27 finding that a respondent engaged in an unlawful employment

1 practice under Section 431.006 as alleged in a complaint, a court
2 may:

3 (1) prohibit by injunction the respondent from
4 engaging in an unlawful employment practice under Section 431.006;
5 and

6 (2) order additional equitable relief as may be
7 appropriate.

8 (b) Additional equitable relief may include:

9 (1) hiring or reinstating with or without back pay;

10 (2) upgrading an employee with or without pay; and

11 (3) paying court costs.

12 (c) Liability under a back pay award may not accrue for a
13 date more than two years before the date a complaint is filed with
14 the commission. Interim earnings, workers' compensation benefits,
15 and unemployment compensation benefits received operate to reduce
16 the back pay otherwise allowable.

17 Sec. 431.166. COMPENSATORY AND PUNITIVE DAMAGES. (a) On
18 finding that a respondent engaged in an intentional unlawful
19 employment practice under Section 431.006 as alleged in a
20 complaint, a court may, as provided by this section, award:

21 (1) compensatory damages; and

22 (2) punitive damages.

23 (b) A complainant may recover punitive damages against a
24 respondent, other than a respondent that is a governmental entity,
25 if the complainant demonstrates that the respondent engaged in an
26 unlawful employment practice under Section 431.006 with malice or
27 with reckless indifference to the state-protected rights of an

1 aggrieved individual.

2 (c) Compensatory damages awarded under this section may not
3 include:

4 (1) back pay;

5 (2) interest on back pay; or

6 (3) other relief authorized under Section 431.165(b).

7 (d) The sum of the amount of compensatory damages awarded
8 under this section for future pecuniary losses, emotional pain,
9 suffering, inconvenience, mental anguish, loss of enjoyment of
10 life, and other nonpecuniary losses and the amount of punitive
11 damages awarded under this section may not exceed, for each
12 complainant:

13 (1) \$50,000 in the case of a respondent that has fewer
14 than 101 employees;

15 (2) \$100,000 in the case of a respondent that has more
16 than 100 and fewer than 201 employees;

17 (3) \$200,000 in the case of a respondent that has more
18 than 200 and fewer than 501 employees; and

19 (4) \$300,000 in the case of a respondent that has more
20 than 500 employees.

21 (e) For the purposes of Subsection (d), in determining the
22 number of employees of a respondent, the requisite number of
23 employees must be employed by the respondent for each of 20 or more
24 calendar weeks in the current or preceding calendar year.

25 Sec. 431.167. ATTORNEY'S FEES; COSTS. (a) In a proceeding
26 under this subchapter, a court may allow the prevailing party,
27 other than the commission, a reasonable attorney's fee as part of

1 the costs.

2 (b) The state, a state agency, or a political subdivision is
3 liable for costs, including attorney's fees, to the same extent as a
4 private person.

5 (c) In awarding costs and attorney's fees in an action or a
6 proceeding under this subchapter, the court, in its discretion, may
7 include reasonable expert fees.

8 Sec. 431.168. COMPELLED COMPLIANCE. If an employer fails
9 to comply with a court order issued under this subchapter, a party
10 to the action or the commission, on the written request of a person
11 aggrieved by the failure, may commence proceedings to compel
12 compliance with the order.

13 Sec. 431.169. TRIAL DE NOVO. (a) A judicial proceeding
14 under this subchapter is by trial de novo.

15 (b) A commission finding, recommendation, determination, or
16 other action is not binding on a court.

17 SECTION 4. The changes in law made by this Act apply only to
18 a violation of Section 431.006, Government Code, as amended by this
19 Act, that is based on conduct occurring on or after the effective
20 date of this Act. A violation of Section 431.006, Government Code,
21 that is based on conduct occurring before the effective date of this
22 Act is governed by the law in effect on the date the conduct
23 occurred, and the former law is continued in effect for that
24 purpose.

25 SECTION 5. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

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- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2011.