

AN ACT

relating to employment protection for members of the state military forces and specialty license plates for female members of the armed 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

1 employee, as soon as practicable after release from duty, must give
2 written or actual notice of intent to return to employment.

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

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

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

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

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

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

24 SUBCHAPTER K. ADMINISTRATIVE REVIEW AND JUDICIAL ENFORCEMENT

25 Sec. 431.151. DEFINITIONS. In this subchapter:

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

1 (2) "Complainant" means an individual who brings an
2 action or proceeding under this subchapter.

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

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

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

10 (c) The complaint must state:

11 (1) that an unlawful employment practice under Section
12 431.006 has been committed;

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

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

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

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

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

1 received by the commission.

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

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

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

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

25 Sec. 431.156. DETERMINATION OF REASONABLE CAUSE; REVIEW BY
26 PANEL. If, after investigation, the commission determines that
27 there is reasonable cause to believe that the respondent engaged in

1 an unlawful employment practice under Section 431.006 as alleged in
2 a complaint, the commission shall:

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

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

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

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

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

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

1 commission shall file a petition seeking appropriate temporary
2 relief against the respondent pending final determination of a
3 proceeding under this subchapter.

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

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

8 (2) the respondent resides.

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

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

12 and

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

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

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

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

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

26 Sec. 431.161. NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL
27 ACTION. (a) A complainant who receives notice under Section

1 431.158 that the complaint is dismissed or not resolved is entitled
2 to request from the commission a written notice of the
3 complainant's right to file a civil action.

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

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

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

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

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

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

21 (2) before commencement of the action, the commission
22 issued a determination of reasonable cause to believe that Section
23 431.006 was violated.

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

27 Sec. 431.165. INJUNCTION; EQUITABLE RELIEF. (a) On

1 finding that a respondent engaged in an unlawful employment
2 practice under Section 431.006 as alleged in a complaint, a court
3 may:

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

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

9 (b) Additional equitable relief may include:

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

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

12 (3) paying court costs.

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

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

22 (1) compensatory damages; and

23 (2) punitive damages.

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

1 with reckless indifference to the state-protected rights of an
2 aggrieved individual.

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

5 (1) back pay;

6 (2) interest on back pay; or

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

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

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

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

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

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

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

26 Sec. 431.167. ATTORNEY'S FEES; COSTS. (a) In a proceeding
27 under this subchapter, a court may allow the prevailing party,

1 other than the commission, a reasonable attorney's fee as part of
2 the costs.

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

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

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

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

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

18 SECTION 4. Subchapter D, Chapter 504, Transportation Code,
19 is amended by adding Section 504.317 to read as follows:

20 Sec. 504.317. WOMEN VETERANS. The department shall issue
21 specialty license plates for female active or former members of the
22 United States armed forces, Texas National Guard, or Texas State
23 Guard. The license plates must include the words "Woman Veteran" in
24 red.

25 SECTION 5. The changes in law made by this Act apply only to
26 a violation of Section 431.006, Government Code, as amended by this
27 Act, that is based on conduct occurring on or after the effective

1 date of this Act. A violation of Section 431.006, Government Code,
2 that is based on conduct occurring before the effective date of this
3 Act is governed by the law in effect on the date the conduct
4 occurred, and the former law is continued in effect for that
5 purpose.

6 SECTION 6. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 1178 was passed by the House on May 5, 2011, by the following vote: Yeas 146, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1178 on May 25, 2011, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1178 on May 28, 2011, by the following vote: Yeas 146, Nays 0, 2 present, not voting.

Chief Clerk of the House

H.B. No. 1178

I certify that H.B. No. 1178 was passed by the Senate, with amendments, on May 23, 2011, by the following vote: Yeas 30, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1178 on May 28, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor