

1-1 By: Flynn (Senate Sponsor - Birdwell) H.B. No. 1178
1-2 (In the Senate - Received from the House May 6, 2011;
1-3 May 9, 2011, read first time and referred to Committee on Economic
1-4 Development; May 13, 2011, reported favorably by the following
1-5 vote: Yeas 6, Nays 0; May 13, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to employment protection for members of the state military
1-9 forces.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 431.001, Government Code, is amended by
1-12 adding Subdivisions (5), (6), and (7) to read as follows:

1-13 (5) "Employee" has the meaning assigned by Section
1-14 21.002, Labor Code.

1-15 (6) "Employer" has the meaning assigned by Section
1-16 21.002, Labor Code.

1-17 (7) "Political subdivision" has the meaning assigned
1-18 by Section 21.002, Labor Code.

1-19 SECTION 2. Section 431.006, Government Code, is amended to
1-20 read as follows:

1-21 Sec. 431.006. REEMPLOYMENT OF PERSON CALLED TO TRAINING OR
1-22 DUTY. (a) ~~An [A-private]~~ employer may not terminate the
1-23 employment of ~~an [a-permanent]~~ employee who is a member of the state
1-24 military forces of this state or any other state because the
1-25 employee is ordered to authorized training or duty by a proper
1-26 authority. The employee is entitled to return to the same
1-27 employment held when ordered to training or duty and may not be
1-28 subjected to loss of time, efficiency rating, vacation time, or any
1-29 benefit of employment during or because of the absence. The
1-30 employee, as soon as practicable after release from duty, must give
1-31 written or actual notice of intent to return to employment.

1-32 (b) A violation of this section is an unlawful employment
1-33 practice. A person injured by a violation of this section may file
1-34 a complaint with the Texas Workforce Commission civil rights
1-35 division under Subchapter K [is entitled to:

1-36 (1) damages in an amount not exceeding six months'
1-37 compensation at the rate at which the person was compensated when
1-38 ordered to training or duty; and

1-39 (2) reasonable attorney's fees approved by the
1-40 court].

1-41 ~~[(c) It is a defense to an action under this section that the~~
1-42 ~~employer's circumstances changed while the employee was in training~~
1-43 ~~or on duty to an extent that makes reemployment impossible or~~
1-44 ~~unreasonable. The employer has the burden of proving the~~
1-45 ~~impossibility or unreasonableness of reemploying the employee~~
1-46 ~~under the employer's changed circumstances.~~

1-47 ~~[(d) An employer may not delay or attempt to defeat a~~
1-48 ~~reemployment obligation under this section by demanding~~
1-49 ~~documentation that does not exist or is not readily available at the~~
1-50 ~~time notice is given under Subsection (a).]~~

1-51 SECTION 3. Chapter 431, Government Code, is amended by
1-52 adding Subchapter K to read as follows:

1-53 SUBCHAPTER K. ADMINISTRATIVE REVIEW AND JUDICIAL ENFORCEMENT

1-54 Sec. 431.151. DEFINITIONS. In this subchapter:

1-55 (1) "Commission" means the Texas Workforce Commission
1-56 civil rights division.

1-57 (2) "Complainant" means an individual who brings an
1-58 action or proceeding under this subchapter.

1-59 (3) "Respondent" means the person charged in a
1-60 complaint filed under this subchapter.

1-61 Sec. 431.152. FILING OF COMPLAINT; FORM AND CONTENT;
1-62 SERVICE. (a) A person claiming to be aggrieved by an unlawful
1-63 employment practice under Section 431.006 or the person's agent may
1-64 file a complaint with the commission.

2-1 (b) The complaint must be in writing and made under oath.
2-2 (c) The complaint must state:
2-3 (1) that an unlawful employment practice under Section
2-4 431.006 has been committed;
2-5 (2) the facts on which the complaint is based,
2-6 including the date, place, and circumstances of the alleged
2-7 unlawful employment practice; and
2-8 (3) facts sufficient to enable the commission to
2-9 identify the respondent.
2-10 (d) The commission shall serve the respondent with a copy of
2-11 the perfected complaint not later than the 10th day after the date
2-12 the complaint is filed.
2-13 (e) A complaint may be amended to cure technical defects or
2-14 omissions, including a failure to verify the complaint or to
2-15 clarify and amplify an allegation made in the complaint.
2-16 (f) An amendment to a complaint alleging additional facts
2-17 that constitute an unlawful employment practice under Section
2-18 431.006 relating to or arising from the subject matter of the
2-19 original complaint relates back to the date the complaint was first
2-20 received by the commission.
2-21 Sec. 431.153. ALTERNATIVE DISPUTE RESOLUTION. The use of
2-22 alternative means of dispute resolution, including settlement
2-23 negotiations, conciliation, facilitation, mediation,
2-24 fact-finding, minitrials, and arbitration, is encouraged to
2-25 resolve disputes arising under Section 431.006. The settlement of
2-26 a disputed claim under this subchapter that results from the use of
2-27 traditional or alternative means of dispute resolution is binding
2-28 on the parties to the claim.
2-29 Sec. 431.154. INVESTIGATION BY COMMISSION. The commission
2-30 shall investigate a complaint arising under Section 431.006 and
2-31 determine if there is reasonable cause to believe that the
2-32 respondent engaged in an unlawful employment practice as alleged in
2-33 the complaint.
2-34 Sec. 431.155. LACK OF REASONABLE CAUSE; DISMISSAL OF
2-35 COMPLAINT. (a) If, after investigation, the commission
2-36 determines that reasonable cause does not exist to believe that the
2-37 respondent engaged in an unlawful employment practice under Section
2-38 431.006 as alleged in a complaint, the commission shall issue a
2-39 written determination incorporating the finding that the evidence
2-40 does not support the complaint and dismissing the complaint.
2-41 (b) The commission shall serve a copy of the determination
2-42 on the complainant, the respondent, and other agencies as required
2-43 by law.
2-44 Sec. 431.156. DETERMINATION OF REASONABLE CAUSE; REVIEW BY
2-45 PANEL. If, after investigation, the commission determines that
2-46 there is reasonable cause to believe that the respondent engaged in
2-47 an unlawful employment practice under Section 431.006 as alleged in
2-48 a complaint, the commission shall:
2-49 (1) issue a written determination incorporating the
2-50 finding that the evidence supports the complaint; and
2-51 (2) serve a copy of the determination on the
2-52 complainant, the respondent, and other agencies as required by law.
2-53 Sec. 431.157. RESOLUTION BY INFORMAL METHODS. (a) If a
2-54 determination of reasonable cause is made, the commission shall
2-55 endeavor to eliminate the alleged unlawful employment practice
2-56 arising under Section 431.006 by informal methods of conference,
2-57 conciliation, and persuasion.
2-58 (b) Without the written consent of the complainant and
2-59 respondent, the commission, its executive director, or its other
2-60 officers or employees may not disclose to the public information
2-61 about the efforts in a particular case to resolve an alleged
2-62 unlawful employment practice by conference, conciliation, or
2-63 persuasion, regardless of whether there is a determination of
2-64 reasonable cause.
2-65 Sec. 431.158. NOTICE OF DISMISSAL OR UNRESOLVED COMPLAINT.
2-66 If the commission dismisses a complaint or does not resolve the
2-67 complaint, the commission shall inform the complainant of the
2-68 dismissal or failure to resolve the complaint in writing by
2-69 certified mail.

3-1 Sec. 431.159. TEMPORARY INJUNCTIVE RELIEF. (a) If the
 3-2 commission concludes from a preliminary investigation of an
 3-3 unlawful employment practice arising under Section 431.006 alleged
 3-4 in a complaint that prompt judicial action is necessary, the
 3-5 commission shall file a petition seeking appropriate temporary
 3-6 relief against the respondent pending final determination of a
 3-7 proceeding under this subchapter.

3-8 (b) The petition shall be filed in a district court in a
 3-9 county in which:

3-10 (1) the alleged unlawful employment practice that is
 3-11 the subject of the complaint occurred; or

3-12 (2) the respondent resides.

3-13 (c) A court may not issue temporary injunctive relief unless
 3-14 the commission shows:

3-15 (1) a substantial likelihood of success on the merits;
 3-16 and

3-17 (2) irreparable harm to the complainant in the absence
 3-18 of the preliminary relief pending final determination on the
 3-19 merits.

3-20 Sec. 431.160. CIVIL ACTION BY COMMISSION. (a) The
 3-21 commission may bring a civil action against a respondent if:

3-22 (1) the commission determines that there is reasonable
 3-23 cause to believe that the respondent engaged in an unlawful
 3-24 employment practice under Section 431.006; and

3-25 (2) the commission's efforts to resolve the
 3-26 discriminatory practice to the satisfaction of the complainant and
 3-27 respondent through informal methods have been unsuccessful.

3-28 (b) The complainant may intervene in a civil action brought
 3-29 by the commission.

3-30 Sec. 431.161. NOTICE OF COMPLAINANT'S RIGHT TO FILE CIVIL
 3-31 ACTION. (a) A complainant who receives notice under Section
 3-32 431.158 that the complaint is dismissed or not resolved is entitled
 3-33 to request from the commission a written notice of the
 3-34 complainant's right to file a civil action.

3-35 (b) The complainant must request the notice in writing.

3-36 (c) The executive director of the commission may issue the
 3-37 notice.

3-38 (d) Failure of the executive director of the commission to
 3-39 issue the notice of a complainant's right to file a civil action
 3-40 does not affect the complainant's right under this subchapter to
 3-41 bring a civil action against the respondent.

3-42 Sec. 431.162. CIVIL ACTION BY COMPLAINANT. Within 60 days
 3-43 after the date a notice of the right to file a civil action is
 3-44 received, the complainant may bring a civil action against the
 3-45 respondent.

3-46 Sec. 431.163. COMMISSION'S INTERVENTION IN CIVIL ACTION BY
 3-47 COMPLAINANT. After receipt of a timely application, a court may
 3-48 permit the commission to intervene in a civil action filed under
 3-49 Section 431.162 if:

3-50 (1) the commission certifies that the case is of
 3-51 general public importance; and

3-52 (2) before commencement of the action, the commission
 3-53 issued a determination of reasonable cause to believe that Section
 3-54 431.006 was violated.

3-55 Sec. 431.164. ASSIGNMENT TO EARLY HEARING. The court shall
 3-56 set an action brought under this subchapter for hearing at the
 3-57 earliest practicable date to expedite the action.

3-58 Sec. 431.165. INJUNCTION; EQUITABLE RELIEF. (a) On
 3-59 finding that a respondent engaged in an unlawful employment
 3-60 practice under Section 431.006 as alleged in a complaint, a court
 3-61 may:

3-62 (1) prohibit by injunction the respondent from
 3-63 engaging in an unlawful employment practice under Section 431.006;
 3-64 and

3-65 (2) order additional equitable relief as may be
 3-66 appropriate.

3-67 (b) Additional equitable relief may include:

3-68 (1) hiring or reinstating with or without back pay;

3-69 (2) upgrading an employee with or without pay; and

4-1 (3) paying court costs.

4-2 (c) Liability under a back pay award may not accrue for a
 4-3 date more than two years before the date a complaint is filed with
 4-4 the commission. Interim earnings, workers' compensation benefits,
 4-5 and unemployment compensation benefits received operate to reduce
 4-6 the back pay otherwise allowable.

4-7 Sec. 431.166. COMPENSATORY AND PUNITIVE DAMAGES. (a) On
 4-8 finding that a respondent engaged in an intentional unlawful
 4-9 employment practice under Section 431.006 as alleged in a
 4-10 complaint, a court may, as provided by this section, award:

4-11 (1) compensatory damages; and

4-12 (2) punitive damages.

4-13 (b) A complainant may recover punitive damages against a
 4-14 respondent, other than a respondent that is a governmental entity,
 4-15 if the complainant demonstrates that the respondent engaged in an
 4-16 unlawful employment practice under Section 431.006 with malice or
 4-17 with reckless indifference to the state-protected rights of an
 4-18 aggrieved individual.

4-19 (c) Compensatory damages awarded under this section may not
 4-20 include:

4-21 (1) back pay;

4-22 (2) interest on back pay; or

4-23 (3) other relief authorized under Section 431.165(b).

4-24 (d) The sum of the amount of compensatory damages awarded
 4-25 under this section for future pecuniary losses, emotional pain,
 4-26 suffering, inconvenience, mental anguish, loss of enjoyment of
 4-27 life, and other nonpecuniary losses and the amount of punitive
 4-28 damages awarded under this section may not exceed, for each
 4-29 complainant:

4-30 (1) \$50,000 in the case of a respondent that has fewer
 4-31 than 101 employees;

4-32 (2) \$100,000 in the case of a respondent that has more
 4-33 than 100 and fewer than 201 employees;

4-34 (3) \$200,000 in the case of a respondent that has more
 4-35 than 200 and fewer than 501 employees; and

4-36 (4) \$300,000 in the case of a respondent that has more
 4-37 than 500 employees.

4-38 (e) For the purposes of Subsection (d), in determining the
 4-39 number of employees of a respondent, the requisite number of
 4-40 employees must be employed by the respondent for each of 20 or more
 4-41 calendar weeks in the current or preceding calendar year.

4-42 Sec. 431.167. ATTORNEY'S FEES; COSTS. (a) In a proceeding
 4-43 under this subchapter, a court may allow the prevailing party,
 4-44 other than the commission, a reasonable attorney's fee as part of
 4-45 the costs.

4-46 (b) The state, a state agency, or a political subdivision is
 4-47 liable for costs, including attorney's fees, to the same extent as a
 4-48 private person.

4-49 (c) In awarding costs and attorney's fees in an action or a
 4-50 proceeding under this subchapter, the court, in its discretion, may
 4-51 include reasonable expert fees.

4-52 Sec. 431.168. COMPELLED COMPLIANCE. If an employer fails
 4-53 to comply with a court order issued under this subchapter, a party
 4-54 to the action or the commission, on the written request of a person
 4-55 aggrieved by the failure, may commence proceedings to compel
 4-56 compliance with the order.

4-57 Sec. 431.169. TRIAL DE NOVO. (a) A judicial proceeding
 4-58 under this subchapter is by trial de novo.

4-59 (b) A commission finding, recommendation, determination, or
 4-60 other action is not binding on a court.

4-61 SECTION 4. The changes in law made by this Act apply only to
 4-62 a violation of Section 431.006, Government Code, as amended by this
 4-63 Act, that is based on conduct occurring on or after the effective
 4-64 date of this Act. A violation of Section 431.006, Government Code,
 4-65 that is based on conduct occurring before the effective date of this
 4-66 Act is governed by the law in effect on the date the conduct
 4-67 occurred, and the former law is continued in effect for that
 4-68 purpose.

4-69 SECTION 5. This Act takes effect immediately if it receives

5-1 a vote of two-thirds of all the members elected to each house, as
5-2 provided by Section 39, Article III, Texas Constitution. If this
5-3 Act does not receive the vote necessary for immediate effect, this
5-4 Act takes effect September 1, 2011.

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