

House Bill 1178
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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 written or actual notice of intent to return to employment.

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

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

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

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SECTION 1. Same as House version.

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~~[(c) It is a defense to an action under this section that the employer's circumstances changed while the employee was in training or on duty to an extent that makes reemployment impossible or unreasonable. The employer has the burden of proving the impossibility or unreasonableness of reemploying the employee under the employer's changed circumstances.~~
~~[(d) An employer may not delay or attempt to defeat a reemployment obligation under this section by demanding documentation that does not exist or is not readily available at the time notice is given under Subsection (a).]~~

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

SUBCHAPTER K. ADMINISTRATIVE REVIEW AND JUDICIAL ENFORCEMENT

Sec. 431.151. DEFINITIONS. In this subchapter:

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

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

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

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

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

(c) The complaint must state:

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

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

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

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

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

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

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

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

Sec. 431.155. LACK OF REASONABLE CAUSE; DISMISSAL OF COMPLAINT. (a) If, after investigation, the commission determines that reasonable cause does not

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exist to believe that the respondent engaged in an unlawful employment practice under Section 431.006 as alleged in a complaint, the commission shall issue a written determination incorporating the finding that the evidence does not support the complaint and dismissing the complaint.

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

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

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

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

Sec. 431.157. RESOLUTION BY INFORMAL METHODS.

(a) If a determination of reasonable cause is made, the commission shall endeavor to eliminate the alleged unlawful employment practice arising under Section 431.006 by informal methods of conference, conciliation, and persuasion.

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

Sec. 431.158. NOTICE OF DISMISSAL OR UNRESOLVED COMPLAINT. If the commission dismisses

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a complaint or does not resolve the complaint, the commission shall inform the complainant of the dismissal or failure to resolve the complaint in writing by certified mail.

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

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

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

(2) the respondent resides.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(2) order additional equitable relief as may be appropriate.
(b) Additional equitable relief may include:
(1) hiring or reinstating with or without back pay;
(2) upgrading an employee with or without pay; and
(3) paying court costs.
(c) Liability under a back pay award may not accrue for a date more than two years before the date a complaint is filed with the commission. Interim earnings, workers' compensation benefits, and unemployment compensation benefits received operate to reduce the back pay otherwise allowable.
Sec. 431.166. COMPENSATORY AND PUNITIVE DAMAGES. (a) On finding that a respondent engaged in an intentional unlawful employment practice under Section 431.006 as alleged in a complaint, a court may, as provided by this section, award:
(1) compensatory damages; and
(2) punitive damages.
(b) A complainant may recover punitive damages against a respondent, other than a respondent that is a governmental entity, if the complainant demonstrates that the respondent engaged in an unlawful employment practice under Section 431.006 with malice or with reckless indifference to the state-protected rights of an aggrieved individual.
(c) Compensatory damages awarded under this section may not include:
(1) back pay;
(2) interest on back pay; or
(3) other relief authorized under Section 431.165(b).
(d) The sum of the amount of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss

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of enjoyment of life, and other nonpecuniary losses and the amount of punitive damages awarded under this section may not exceed, for each complainant:

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

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

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

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

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

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

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

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

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

Sec. 431.169. TRIAL DE NOVO. (a) A judicial proceeding

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under this subchapter is by trial de novo.

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

No equivalent provision.

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

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

SENATE VERSION (IE)

SECTION __. Subchapter D, Chapter 504, Transportation Code, is amended by adding Section 504.317.

Sec. 504.317. WOMEN VETERANS. The department shall issue specialty license plates for female active or former members of the United States armed forces, Texas National Guard, or Texas State Guard. The license plates must include the words "Woman Veteran" in red. [FA1]

SECTION 4. Same as House version.

SECTION 5. Same as House version.

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