

By: Lewis

H.B. No. 1031

Substitute the following for H.B. No. 1031:

By: Farney

C.S.H.B. No. 1031

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the confidentiality of certain communications  
3 involving an ombudsman program established by an employer as an  
4 alternative dispute resolution service.

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

6 SECTION 1. Title 7, Civil Practice and Remedies Code, is  
7 amended by adding Chapter 160 to read as follows:

8 CHAPTER 160. OMBUDSMAN PROGRAM ESTABLISHED BY EMPLOYER

9 Sec. 160.001. DEFINITIONS. In this chapter:

10 (1) "Employee" means a person who is employed by an  
11 employer.

12 (2) "Employer" means a person who employs one or more  
13 employees.

14 (3) "Investigation" means an inquiry conducted for an  
15 employer to make an official factual determination or an official  
16 disposition or decision.

17 Sec. 160.002. ESTABLISHMENT OF OMBUDSMAN PROGRAM. (a) An  
18 employer may establish an ombudsman program to provide an  
19 alternative dispute resolution service. The program may provide  
20 information, facilitation, mediation, and conciliation guidance  
21 and assistance to:

22 (1) help employees and others resolve workplace and  
23 organizational disputes; and

24 (2) permit employees and other persons to have

1 confidential communications on issues of concern or conflict,  
2 including allegations of misconduct.

3 (b) An ombudsman program established under this chapter by  
4 an employer:

5 (1) must be neutral and functionally independent;

6 (2) may not have the authority to make managerial  
7 decisions with regard to any issue brought to the program;

8 (3) may not be responsible for any essential business  
9 function of the employer, including operations, compliance, human  
10 resources, or equal employment opportunity;

11 (4) may not be staffed by employees who hold positions  
12 with responsibility for any essential business function of the  
13 employer, including operations, compliance, human resources, or  
14 equal employment opportunity;

15 (5) may be staffed by employees of the employer but not  
16 by an officer or director of the employer; and

17 (6) must have direct access to the employer's senior  
18 management.

19 (c) An ombudsman program may not have authority to receive  
20 notice of claims against the employer.

21 (d) An ombudsman program may not have authority to collect,  
22 assemble, or maintain permanent information or records relating to  
23 confidential communications for the employer.

24 (e) An ombudsman program may not have authority to conduct a  
25 formal investigation for the employer.

26 (f) An ombudsman program and the employer establishing the  
27 program shall adequately publicize the existence, purpose, and

1 limitations of the program and inform employees and others that  
2 communications with the program are confidential.

3 (g) An employer that establishes an ombudsman program under  
4 this chapter shall ensure that the program has procedures and  
5 facilities adequate to permit confidential access to the program's  
6 office and to preserve confidential communications. The program  
7 shall adhere to generally accepted standards for organizational  
8 ombudsman programs to preserve confidentiality of communications.

9 Sec. 160.003. CONFIDENTIALITY PROVISIONS. (a) This  
10 section applies only to an ombudsman program that meets the  
11 requirements of Section 160.002.

12 (b) Except as provided by Subsections (c) and (d), the  
13 following oral and written communications are confidential,  
14 privileged, and not subject to discovery and may not be used as  
15 evidence in any judicial or administrative proceeding:

16 (1) communications between a staff member of the  
17 program and an employee or other person for the purpose of assisting  
18 with the informal and expeditious resolution of a concern or  
19 complaint; and

20 (2) communications between staff members of the  
21 program for the purpose of assisting with the informal and  
22 expeditious resolution of a concern or complaint.

23 (c) The following oral or written communications are not  
24 privileged or protected from discovery in any judicial or  
25 administrative proceeding:

26 (1) communications between a person making a  
27 complaint, or any staff member of an ombudsman program, and an

1 officer, director, agent, or employee of the employer for the  
2 purpose of notifying the officer, director, agent, or employee of  
3 the existence of an unsafe practice or violation of a state or  
4 federal law; and

5 (2) communications concerning:

6 (A) conduct, including a pattern of conduct, that  
7 is reasonably likely to result in damages to any person; or

8 (B) a threat of serious harm or injury to any  
9 person.

10 (d) A staff member of an ombudsman program shall disclose  
11 confidential material:

12 (1) that concerns conduct, including a pattern of  
13 conduct, that is reasonably likely to result in damages to any  
14 person; or

15 (2) the disclosure of which is necessary to prevent  
16 serious harm or injury to any person.

17 Sec. 160.004. APPLICATION OF OTHER LAW. The  
18 confidentiality provisions of this chapter are in addition to any  
19 privilege or protection under statutory or common law, including  
20 Section 154.073, the attorney-client privilege, and the attorney  
21 work product privilege.

22 Sec. 160.005. ADMISSIBILITY OF OTHER INFORMATION. This  
23 chapter does not prevent:

24 (1) the discovery or admissibility of information that  
25 is otherwise discoverable;

26 (2) the disclosure of information for research or  
27 educational purposes in connection with a training or educational

1 component of an ombudsman program if the identity of the parties and  
2 the specific issues from the confidential communication are not  
3 identifiable; or

4 (3) the preparation and disclosure of statistical  
5 summary reports organized by category of the issues presented if  
6 the summary is based on a sufficiently large number of issues so  
7 that the identity of the parties and the specific issues from the  
8 confidential communication are not identifiable.

9 Sec. 160.006. APPLICABILITY OF CHAPTER. (a) This chapter  
10 does not apply to an ombudsman program or other alternative dispute  
11 resolution service established by an employer unless the program or  
12 service provides expressly in writing that this chapter applies to  
13 the program or service.

14 (b) This chapter does not prevent an employer from  
15 establishing an ombudsman program or other alternative dispute  
16 resolution service that is not subject to this chapter.

17 SECTION 2. The change in law made by this Act with regard to  
18 the confidentiality of communications applies only to a suit or  
19 administrative proceeding that commences on or after the effective  
20 date of this Act. A suit or administrative proceeding that  
21 commences before that date is governed by the law in effect on the  
22 date the suit or proceeding commenced, and the former law is  
23 continued in effect for that purpose.

24 SECTION 3. This Act takes effect September 1, 2013.