

By: Hancock

S.B. No. 399

A BILL TO BE ENTITLED

AN ACT

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

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

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

CHAPTER 160. OMBUDSMAN PROGRAM ESTABLISHED BY EMPLOYER

Sec. 160.001. DEFINITIONS. In this chapter:

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

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

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

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

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

(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) The following oral and written communications are
13 confidential, privileged, and not subject to discovery and may not
14 be used as evidence in any judicial or administrative proceeding:

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

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

22 (c) Notwithstanding Subsection (b), a staff member of an
23 ombudsman program may voluntarily disclose confidential
24 information if the staff member determines that disclosure is
25 necessary to prevent an imminent threat of serious harm.

26 (d) Information discovered or disclosed in violation of
27 this chapter is not admissible as evidence in any proceeding or for

1 any other purpose.

2 Sec. 160.004. APPLICATION OF OTHER LAW. The
3 confidentiality provisions of this chapter are in addition to any
4 privilege or protection under statutory or common law, including
5 Section 154.073, the attorney-client privilege, and the attorney
6 work product privilege.

7 Sec. 160.005. ADMISSIBILITY OF OTHER INFORMATION. This
8 chapter does not prevent:

9 (1) the discovery or admissibility of information that
10 is otherwise discoverable;

11 (2) the disclosure of information for research or
12 educational purposes in connection with a training or educational
13 component of an ombudsman program if the identity of the parties and
14 the specific issues from the confidential communication are not
15 identifiable; or

16 (3) the preparation and disclosure of statistical
17 summary reports organized by category of the issues presented if
18 the summary is based on a sufficiently large number of issues so
19 that the identity of the parties and the specific issues from the
20 confidential communication are not identifiable.

21 Sec. 160.006. APPLICABILITY OF CHAPTER. (a) This chapter
22 does not apply to an ombudsman program or other alternative dispute
23 resolution service established by an employer unless the program or
24 service provides expressly in writing that this chapter applies to
25 the program or service.

26 (b) This chapter does not prevent an employer from
27 establishing an ombudsman program or other alternative dispute

1 resolution service that is not subject to this chapter.

2 SECTION 2. The change in law made by this Act with regard to
3 the confidentiality of communications applies only to a suit or
4 administrative proceeding that commences on or after the effective
5 date of this Act. A suit or administrative proceeding that
6 commences before that date is governed by the law in effect on the
7 date the suit or proceeding commenced, and the former law is
8 continued in effect for that purpose.

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