

- SUBJECT:** Prohibiting termination of certain employees prior to MMI certification
- COMMITTEE:** Homeland Security and Public Safety — committee substitute recommended
- VOTE:** 8 ayes — P. King, Nevárez, Burns, Hinojosa, Holland, Metcalf, Schaefer, Wray
- 0 nays
- 1 absent — J. Johnson
- WITNESSES:** For — Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Mitch Landry, Texas Municipal Police Association (TMPA); (*Registered, but did not testify:* Jimmy Rodriguez, San Antonio Police Officers Association; Glenn Deshields, Texas State Association of Fire Fighters)
- Against — None
- On — David Reagan, Texas Municipal League Intergovernmental Risk Pool
- BACKGROUND:** Labor Code, ch. 408 governs the computation of workers' compensation benefits. Sec. 401.011 defines a compensable injury as an injury that arises in the course of employment for which compensation is payable. Maximum medical improvement (MMI) is defined as the earlier of:
- the date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated;
  - the expiration of two years from the date on which income benefits begin to accrue; or
  - for a person recovering from spinal surgery, another established date.

Sec. 408.0041 allows a medical examination to be requested to resolve any question about the impairment caused by the compensable injury, the attainment of MMI, the ability of the employee to return to work, or other similar issues.

Local Government Code, ch. 143 allows cities with a population of 10,000 or more with a paid fire or police department to vote to adopt the provisions of that chapter and establish a firefighters' and police officers' civil service commission, which helps reach agreements on compensation and other conditions.

**DIGEST:**

CSHB 473 would prohibit a governmental entity from discharging, indefinitely suspending, or terminating from employment a peace officer, detention officer, county jailer, or firefighter based on an inability to perform associated duties due to injury before the person was certified as having reached maximum medical improvement, unless a doctor indicated that the person was unable to return to work.

An employer in violation would be liable for reasonable damages incurred by the employee in an amount up to \$100,000, and the employee would be entitled to reinstatement. A current or former peace officer, detention officer, county jailer, or firefighter could sue an employer for the damages and reinstatement, and the burden of proof would be on the employee.

The bill would not apply to an employer that had adopted Local Government Code, ch. 143.

The bill would take effect September 1, 2017, and would apply only to a discharge, indefinite suspension, or termination from employment that occurred on or after that date.

**SUPPORTERS  
SAY:**

CSHB 473 would close a gap between the timelines some cities and counties have adopted to discharge, indefinitely suspend, or terminate injured public safety employees and the statutory timelines to certify maximum medical improvement (MMI). By bridging this gap, the bill would ensure that all employees were treated equally.

Currently, workers' compensation laws normally allow injured employees up to two years before a doctor makes a determination of MMI. However, some municipalities make employment decisions for injured police officers and firefighters before a doctor has had an opportunity to certify MMI. These and other public safety personnel who put their lives on the line may find themselves unemployed without being given a chance to improve their medical condition. This bill would protect the jobs of those who paid a high price and give them a reasonable time to recover.

While some have raised concerns about capping damages in a suit, the bill would be a reasoned step in the right direction. It would allow employees the opportunity to sue for damages and reinstatement, which currently is not an available option. Current law already places limitations on the amount of liability for state and local governments, municipalities, and emergency services organizations in cases where sovereign immunity is waived.

OPPONENTS  
SAY:

CSHB 473 would place an unnecessary cap on the damages a person could receive in a suit. The cap would not align with the true costs in the types of cases to which the bill relates. For a severely injured person, medical costs could be greater than \$100,000, in addition to family obligations and court and attorney fees associated with the suit. Most cities are part of a risk pool that insures against these types of cases, so there is no reason to cap damages.

NOTES:

The committee substitute differs from the filed bill in that CSHB 473 would:

- cap at \$100,000 the amount of damages for which an employer would be liable in a suit; and
- allow an employer to discharge, indefinitely suspend, or terminate an employee if a doctor indicated that the person was unable to return to work.

According to the Legislative Budget Board's fiscal note, no significant

fiscal impact to the state or counties is anticipated. The fiscal note states that a single damage award of \$100,000 could have a significant impact in a small county but that it is not possible to estimate how many first responders might file claims for wrongful discharge.