

SUBJECT: Prohibiting adverse employment action against certain first responders

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Phelan, Hernandez, Deshotel, Guerra, Harless, Holland,
Hunter, P. King, Parker, Raymond, E. Rodriguez, Smithee, Springer

0 nays

WITNESSES: For — Charley Wilkison, Combined Law Enforcement Associations of Texas; Brad McCutcheon, Texas State Association of Firefighters; *(Registered, but did not testify: Joel Romo, Association of Texas EMS Professionals; Kenneth Casaday, Austin Police Association; Jared Clark, Collin County Deputies Association; Alissa Sughrue, National Alliance on Mental Illness (NAMI) Texas; Eric Kunish, National Alliance on Mental Illness-Austin; Will Francis, National Association of Social Workers-Texas Chapter; Mitch Landry, Texas Municipal Police Association; Mike Rumfield, TMPA/America's Defenders Foundation)*

Against — *(Registered, but did not testify: Lorena Campos, City of Dallas)*

On — *(Registered, but did not testify: Craig Holzheuser, Texas EMS Alliance)*

DIGEST: HB 2969 would prohibit adverse employment actions against first responders who had a mental illness.

The bill would apply to first responders employed by a state agency or political subdivision of the state whose duties included responding rapidly to an emergency. This would include licensed peace officers, certain fire protection personnel, and licensed emergency medical services personnel.

An employer of a first responder would be prohibited from suspending, terminating, or taking any other adverse employment action against a first responder solely because the employer knew or believed that the first

responder had a mental illness, except as was necessary to ensure public safety.

A first responder could assert a claim against an employer, including a governmental entity, in a judicial or administrative proceeding or as a defense in a judicial or administrative proceeding. An aggrieved person could seek compensatory damages, reasonable attorney's fees and court costs, and any other appropriate relief.

The bill would waive sovereign immunity to such a lawsuit for liability created by the bill.

The bill would take effect September 1, 2019, and would apply only to a suspension, termination, or other adverse employment action taken by an employer against a first responder on or after that date.

**SUPPORTERS
SAY:**

HB 2969 would put legal protections in place for first responders who had a mental illness. This could encourage first responders suffering from job-related trauma or other mental health issues to disclose this information to supervisors without fear of being fired or subjected to an adverse employment action.

First responders such as police officers, firefighters, and emergency medical personnel experience stress, trauma, and death on a daily basis, and those experiences take a toll. Studies have shown that many first responders report suffering from PTSD, and a survey of firefighters reported that almost half had considered suicide. However, despite efforts by professional associations to help their members access mental health treatment, many first responders still fear they will be stigmatized if they disclose a mental illness to superiors and coworkers. The bill would encourage first responders to talk about their mental state, which could enable them to get help and heal.

The bill would allow employers to take appropriate employment actions if a first responder's mental state could potentially endanger the welfare of the responder's coworkers or the public, which would protect public

safety. Because HB 2969 makes no requirements that first responders be subjected to mental health assessments, the bill would not fiscally burden counties.

**OPPONENTS
SAY:**

HB 2969 could negatively impact public safety by deterring a police department from taking reasonable actions involving an employee for fear of litigation. Because the bill would not define what constituted an adverse employment action and waives sovereign immunity, it could lead to unintended consequences. For instance, a department might hesitate to place an officer who had expressed a mental health issue on administrative leave because that could be interpreted as an adverse employment action.

Current law is sufficient to protect first responders from unlawful discrimination based on their mental health. The Texas Labor Code and the Americans with Disabilities Act already prohibit discrimination against an employee based on a disability.

The bill also could cause expenses for some counties through additional staff and mental health assessments of first responders both during the hiring and employment process.