

BILL ANALYSIS

Senate Research Center

H.B. 3578
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Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current trends and best practice standards in corporate governance, together with federal statute, are encouraging companies to establish anonymous and confidential channels for uncovering and addressing workplace problems. Ombudsman programs provide a means for employees to informally resolve concerns or disputes without resorting to costly and burdensome litigation. Ombudsman programs support employer compliance with state and federal legislation, foster ethical business practices, improve productivity and morale in the workplace, and enhance employer oversight and accountability.

Under current law, ombudsman programs have had only limited success in protecting the identity of parties, and confidential information, when subpoenaed to testify in a formal proceeding. And once employees realize that the ombudsman program can be forced to testify, they become reluctant to come forward, or to persist in addressing a problem.

H.B. 3578 allows an ombudsman program to maintain the confidentiality of communications with employees and provides the legal right for ombudsman programs to withhold the identity of the complainant and protect confidential information, even in the face of a subpoena, unless disclosure is necessary to prevent an imminent threat of serious harm.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 7, Civil Practice and Remedies Code, by adding Chapter 160, as follows:

CHAPTER 160. OMBUDSMAN PROGRAM ESTABLISHED BY EMPLOYER

Sec. 160.001. DEFINITIONS. Defines "employee," "employer," and "investigation."

Sec. 160.002. ESTABLISHMENT OF OMBUDSMAN PROGRAM. (a) Authorizes an employer to establish an ombudsman program to provide an alternative dispute resolution service. Authorizes the program to provide information, facilitation, mediation, and conciliation guidance and assistance to help employees and others resolve workplace and organizational disputes, and to permit employees and other persons to have confidential communications on issues of concern or conflict, including allegations of misconduct.

(b) Provides that an ombudsman program established under this chapter by an employer must be neutral and functionally independent; may not have the authority to make managerial decisions with regard to any issue brought to the program; may not be responsible for any essential business function of the employer, including operations, compliance, human resources, or equal employment opportunity; may not be staffed by employees who hold other positions with responsibility for any essential business function of the employer, including operations, compliance, human resources, or equal employment opportunity; may be staffed by employees of the employer but not by an officer or

director of the employer; and must have direct access to the employer's senior management.

(c) Prohibits an ombudsman program from having authority to receive notice of claims against the employer.

(d) Prohibits an ombudsman program from having authority to collect, assemble, or maintain permanent information or records relating to confidential communications for the employer.

(e) Prohibits an ombudsman program from having authority to conduct a formal investigation for the employer.

(f) Requires an ombudsman program and the employer establishing the program to adequately publicize the existence, purpose, and limitations of the program and inform employees and others that communications with the program are confidential.

(g) Requires an employer that establishes an ombudsman program under this chapter to ensure that the program has procedures and facilities adequate to permit confidential access to the program's office and to preserve confidential communications. Requires the program to adhere to generally accepted standards for organizational ombudsman programs to preserve confidentiality of communications.

Sec. 160.003. CONFIDENTIALITY PROVISIONS. (a) Provides that this section applies only to an ombudsman program that meets the requirements of Section 160.002.

(b) Provides that certain oral and written communications are confidential, privileged, and not subject to discovery and prohibits those communications from being used as evidence in any judicial or administrative proceeding:

(c) Authorizes a staff member of an ombudsman program, notwithstanding Subsection (b), to voluntarily disclose confidential information if the staff member determines that disclosure is necessary to prevent an imminent threat of serious harm.

(d) Provides that information discovered or disclosed in violation of this chapter is not admissible as evidence in any proceeding or for any other purpose.

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

Sec. 160.005. ADMISSIBILITY OF OTHER INFORMATION. Provides that this chapter does not prevent the discovery or admissibility of information that is otherwise discoverable; the disclosure of information for research or educational purposes in connection with a training or educational program of an ombudsman program if the identity of the parties and the specific issues from the confidential communication are not identifiable; or the preparation and disclosure of statistical summary reports organized by category of the issues presented if the summary is based on a sufficiently large number of issues so that the identity of the parties and the specific issues from the confidential communication are not identifiable.

Sec. 160.006. APPLICATION OF CHAPTER. (a) Provides that this chapter does not apply to an ombudsman program or other alternative dispute resolution service established by an employer unless the program or service provides expressly in writing that this chapter applies to the program or service.

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

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2007.