

BILL ANALYSIS

Senate Research Center
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S.B. 399
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Ombudsman programs are independent, informal, and neutral alternative dispute resolution resources created by organizations to encourage and assist employees to internally raise and address issues of misconduct and complaints. Confidentiality is essential for an ombudsman program to serve as a place for employees and others to seek guidance on how to report or resolve workplace disputes.

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

S.B. 399 provides an organizational ombudsman program with confidentiality protections similar to those currently provided to confidential communications in alternative dispute resolution programs.

As proposed, S.B. 399 amends current law relating to the confidentiality of certain communications involving an ombudsman program established by an employer as an alternative dispute resolution service.

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" in this chapter.

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 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:

(1) is required to be neutral and functionally independent;

(2) is prohibited from having the authority to make managerial decisions with regard to any issue brought to the program;

(3) is prohibited from being responsible for any essential business function of the employer, including operations, compliance, human resources, or equal employment opportunity;

(4) is prohibited from being staffed by employees who hold positions with responsibility for any essential business function of the employer, including operations, compliance, human resources, or equal employment opportunity;

(5) is authorized to be staffed by employees of the employer but not by an officer or director of the employer; and

(6) is required to 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 that an ombudsman program and the employer establishing the program 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 that the program 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 the following oral and written communications are confidential, privileged, and not subject to discovery and are prohibited from being used as evidence in any judicial or administrative proceeding:

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

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

(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 (Confidentiality of Certain Records and Communications), 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 component 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. APPLICABILITY 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, 2013.