

SUBJECT: Changing the statute of limitations for unlawful employment practices

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 4 ayes — Oliveira, Collier, Romero, Villalba

3 nays — Simmons, Fletcher, Rinaldi

WITNESSES: For — Becky Moeller, Texas AFL-CIO; Jason Smith, Texas Employment Lawyers Association; (*Registered, but did not testify*: Matt Simpson, ACLU of Texas; Celina Moreno, MALDEF; Ted Melina Raab, Texas AFT (American Federation of Teachers); Ware Wendell, Texas Watch; Maxie Gallardo, Workers Defense Project; Mike Hinojosa; Maria Jimenez)

Against — Annie Spilman, National Federation of Independent Business/Texas; Ronnie Volkening, Texas Retailers Association; (*Registered, but did not testify*: Jon Fisher, Associated Builders and Contractors of Texas; Cathy Dewitt, Texas Association of Business; Kathy Williams, Texas Association of Staffing; Pamela Bratton, TexasSHRM- Society for HR Management Texas State Council)

On — Lowell Keig, Texas Workforce Commission; (*Registered, but did not testify*: Mike Hull, Texans for Lawsuit Reform)

BACKGROUND: Under Labor Code, sec. 21.051, an employer commits an unlawful employment practice if the employer commits certain acts against a person because of a person's race, color, disability, religion, sex, national origin, or age. These acts include discriminating against an individual in connection with compensation.

Ch. 11, subch. E, provides that a person claiming to be aggrieved by an unlawful employment practice may file a complaint with the Texas Workforce Commission, civil rights division. The complaint must be filed by the 180th day after the date the alleged unlawful employment practice occurred.

DIGEST: CSHB 187 would change the deadline to file a complaint based on an unlawful employment practice. A person would be required to file a complaint by the earlier of:

- the 180th day after the date the person discovered the alleged unlawful employment practice; or
- the fifth anniversary of the date the alleged unlawful employment practice occurred.

With respect to a complaint based on the payment of wages, the bill would specify that in calculating the deadline noted above, an unlawful employment practice did not occur each time wages were paid that were affected by the practice.

The bill would take effect September 1, 2015, and would not apply to an unlawful employment practice that occurred before that date.

SUPPORTERS SAY: CSHB 187 would give people a more flexible statute of limitations within which to file a complaint based on unlawful employment practices. Employees often do not discover unlawful employment practices, such as wage discrimination, until some time after the decision was made. It is the culture in many workplaces to discourage employees from discussing salaries with co-workers, making it difficult to discover unequal payment.

The bill would limit the time a person had to file a complaint, giving a definite end to employers for potential liability. The bill also would limit the events that could give rise to a complaint, specifying that each time wages were paid, it would not be considered a new unlawful employment practice.

Businesses would not be burdened by this bill for record retention purposes because they already are required by the Internal Revenue Service to retain employment tax records for at least four years from the time the tax is due or paid. At most, businesses would need to retain records only for a few months longer than under current requirements.

CSHB 187 would make a state court cause of action more accessible but would not increase litigation or complaints drastically. State court can be a less expensive venue and cases can be resolved more quickly than in federal court. Under current law, someone can bring a lawsuit in federal court for the same reasons and within the same statute of limitations as this bill would implement in state law. The courts are not clogged with these lawsuits, and this bill would not increase them significantly.

**OPPONENTS
SAY:**

CSHB 187 would burden businesses unnecessarily with longer record retention requirements and would result in more complaints and lawsuits being filed against employers. Current law is sufficient to provide a balance between the rights of potential complainants and the burden on businesses.

The bill would increase the period of time for which businesses would be required to retain records to five years. This would be overly burdensome, especially for small businesses.

The bill also would cause an increase in complaints and lawsuits because employees would have more time to consider suing their employers. Employees would have 180 days from the date they discovered the alleged unlawful employment practice, rather than from the date the practice occurred as under current law, which could be a significant amount of time after the alleged employment practice.