

# Legislative Analysis



## BAN ADVERSE EMPLOYMENT CONSEQUENCES FOR LEGAL ACTIVITIES AWAY FROM WORK

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**House Bill 4532**

**Sponsor: Rep. Lee Gonzales**

**Committee: Labor**

**Complete to 6-11-07**

### A SUMMARY OF HOUSE BILL 4532 AS INTRODUCED 3-27-07

The bill—to be known as the "Employee Privacy Protection Act"—would prohibit an employer from taking certain adverse actions against an individual who is engaging in—or is regarded as engaging in—a lawful activity both (1) off the employer's premises and (2) during non-work hours.

Prohibited acts. Unless an exception applied, an employer could not do any of the following because of an individual's lawful conduct away from work and off the employer's premises:

- Fail or refuse to hire or recruit.
- Discharge.
- Otherwise discriminate with respect to employment, compensation, or a term, condition, or privilege of employment.

Protection includes employees "regarded as" engaging in a non-work activity. The bill would protect both individuals who actually do engage in a lawful off-duty, off-premises activity disfavored by the employer, and those whom an employer perceives—rightly or wrongly—as doing so.

Exceptions. An employer would be allowed to refuse to hire, discharge, or otherwise discriminate against an individual for off-duty, off-premises conduct that would:

- Directly impair an established bona fide occupational requirement or an employment activity or responsibility of a particular employee or group of employees.
- Create a substantial conflict of interest with the core mission of the employer or violate a written conflict of interest policy.
- Violate an established policy as to property owned or leased by the employer.
- Violate a state or federal law, regulation, or rule regulating applicable to a particular type of employment.

Rights under act non-waivable. An employer could not require an applicant or employee to waive any rights under this law. Such a waiver agreement would be invalid and unenforceable.

Anti-retaliation provision. The bill would prohibit retaliation or discrimination because a person (1) filed an action; (2) testified, assisted, or participated in an investigation, proceeding, or action concerning a violation of the law; or (3) opposed a violation of the law. The bill would also ban retaliation or discrimination against persons about to do any of these things.

Enforcement. A person injured by a violation of the law could bring a civil suit to obtain injunctive relief and damages, and to recover costs and reasonable attorney fees, if successful.

Definitions. The bill contains the following definitions:

- **"Employee"** would mean "an individual who receives compensation for performing services for an employer under an express or implied contract of hire."
- **"Employer"** would mean "an individual or entity that permits 1 or more individuals to work, that accepts applications for employment, or that is an agent of an employer."

#### **FISCAL IMPACT:**

House Bill 4532 would have an indeterminate fiscal impact on the judiciary; any fiscal impact would be related to increased caseload which would depend on the number and complexity of civil lawsuits that might be brought under the bill.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.