

## **BILL ANALYSIS**

S.B. 192  
By: Nelson  
Public Health  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Interested parties assert that the patient advocacy protections that currently exist for nurses need to be enhanced. S.B. 192 seeks to improve patient care and promote patient advocacy by nurses by amending current law relating to patient advocacy activities by nurses and certain other persons and providing an administrative penalty.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 192 amends the Occupations Code to expand the immunities from liability extended to a person who, in good faith, makes a report required or authorized under provisions of the Nursing Practice Act relating to reporting violations and patient care concerns to include immunity from criminal liability and specifies that the civil and criminal liability is the liability that, in the absence of the immunity, might result from making the report. The bill extends the same immunities to a person who advises a nurse of the nurse's right or obligation to report under those same provisions.

S.B. 192 prohibits a nurse from being subjected to retaliatory action, in addition to other actions, as a result of refusing to engage in a certain act or omission relating to patient care, making a good faith report under provisions of the Nursing Practice Act relating to reporting violations and patient care concerns, and requesting a peer review committee determination of whether certain conduct violates a nurse's duty to a patient and makes conforming changes. The bill prohibits a person who advises a nurse of the nurse's right or obligation, as appropriate, to report, to request a nursing peer review committee determination, or to refuse to engage in a certain act or omission relating to patient care from being suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against and makes conforming changes.

S.B. 192 establishes that a report is considered to be made in good faith if the person reporting believed that the report was required or authorized and there was a reasonable factual or legal basis for that belief and makes conforming changes.

S.B. 192 includes a person named as a defendant in a civil action or subjected to other retaliatory action as a result of providing advice to a person regarding filing such a report required or authorized, or reasonably believed to be required or authorized, as a result of refusing to engage in certain conduct or as a result of providing advice to a person regarding requesting in good faith a nursing peer review committee determination among the persons authorized to file a counterclaim in a pending action or prove a cause of action in a subsequent suit to recover defense costs.

S.B. 192 authorizes the reporting of a person suspected of violating the prohibition against

certain retaliatory action to the appropriate licensing agency and authorizes that agency to impose an administrative penalty not to exceed \$25,000 against the person if the agency finds such a violation. The bill specifies that the administrative penalty is in addition to other penalties the agency is authorized to impose and is subject to the procedural requirements applicable to the appropriate licensing agency.

S.B. 192 includes a person who advises a nurse of the nurse's right to report a violation or patient care concern, refuse to engage in certain conduct, or request a nursing peer review committee determination among the persons who have a cause of action against a person who violates the prohibition against retaliatory action and are authorized to recover certain damages, costs, and fees. The bill, in a provision relating to a rebuttable presumption that the person bringing such an action was suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against for giving the advice, includes the condition that the advice that is the subject of such a cause of action be advice given in good faith.

S.B. 192 redefines "peer review" to add to the activities included in that term the provision of information, advice, and assistance to nurses and other persons relating to the rights and obligations of and protections for nurses who raise care concerns or report under the Nursing Practice Act or other state or federal law, the rights and obligations of and protections for nurses who request nursing peer review, nursing practice and patient care concerns, and the resolution of workplace and practice questions relating to nursing and patient care.

S.B. 192 makes conforming and nonsubstantive changes.

**EFFECTIVE DATE**

September 1, 2011.