

BILL ANALYSIS

Senate Research Center
82R1202 JAM-F

S.B. 192
By: Nelson
Health & Human Services
2/28/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 192 improves patient care by promoting patient advocacy by nurses. The bill enhances the patient advocacy protections that currently exist for nurses. For example, the bill extends non-retaliation protections to situations in which a nurse advises another nurse on the nurse's rights to engage in protected patient advocacy activities, extends nurse liability immunity when making a protected report to include immunity from criminal liability, and deters retaliation against nurses for engaging in protected patient advocacy activities.

As proposed, S.B. 192 amends current law relating to patient advocacy activities by nurses and certain other persons and provides an administrative penalty.

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 Section 301.352(a), Occupations Code, as follows:

(a) Prohibits a person from suspending, terminating, or otherwise disciplining, discriminating against, or retaliating against a nurse who refuses to engage in an act or omission as provided by Subsection (a-1) (relating to a nurse refusing to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the Texas Board of Nursing), or a person who advises a nurse of the nurse's rights under this section. Makes nonsubstantive changes.

SECTION 2. Amends Subchapter I, Chapter 301, Occupations Code, by adding Section 301.4011, as follows:

Sec. 301.4011. GOOD FAITH REPORT BY NURSE. Provides that, in this subchapter, 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.

SECTION 3. Amends Section 301.402, Occupations Code, by amending Subsection (f) and adding Subsection (g), as follows:

(f) Prohibits a person from suspending or terminating the employment of, or otherwise disciplining, discriminating against, or retaliating against, a person who reports in good faith, rather than reports without malice, under this section, or advises a nurse of the nurse's rights and obligations under this section. Makes nonsubstantive changes.

(g) Creates this subsection from existing text. Provides that a violation of Subsection (f), rather than this subsection, is subject to Section 301.413.

SECTION 4. Amends Section 301.4025, Occupations Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Prohibits a person from suspending or terminating the employment of, or otherwise disciplining, discriminating against, or retaliating against, a person who reports in good faith under this section, or advises a nurse of the nurse's right to report under this section. Makes conforming and nonsubstantive changes.

(d) Creates this subsection from existing text. Provides that a violation of Subsection (c), rather than this subsection, is subject to Section 301.413.

SECTION 5. Amends Section 301.412, Occupations Code, as follows:

Sec. 301.412. **REPORTING IMMUNITY.** Provides that a person who in good faith makes a report required or authorized under this subchapter, rather than makes a report reasonably believed to be required or authorized under this subchapter, or a person who advises a nurse of the nurse's right or obligation to report under this subchapter is immune from civil and criminal liability that, in absence of the immunity, might result from making the report or giving the advice, and may not be subjected to other retaliatory action as a result of making the report or giving the advice. Makes a conforming change.

SECTION 6. Amends Section 301.413, Occupations Code, by amending Subsections (a), (b), (c), and (e) and adding Subsection (b-1), as follows:

(a) Authorizes a person to file a counterclaim in a pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if:

(1) the person is named as a defendant in a civil action or subjected to other retaliatory action as a result of:

(A) filing a report required or authorized, or reasonably believed to be required or authorized, under this subchapter as a result of refusing to engage in conduct as authorized by Section 301.052;

(B) requesting in good faith a nursing peer review committee determination under Section 303.005 (Request for Peer Review Committee Determination); or

(C) providing advice to a person regarding filing a report required or authorized, or reasonably believed to be required or authorized, under this subchapter as a result of refusing to engage in conduct as authorized by Section 301.352, or requesting in good faith a nursing peer review committee determination under Section 303.005; and

(2) the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.

Deletes existing text authorizing a person named as defendant in a civil action or subjected to other retaliatory action as a result of filing a report required, authorized, or reasonably believed to be required or authorized under this subchapter as a result of refusing to engage in conduct as authorized by Section 301.352, or as a result of requesting in good faith a nursing peer review determination under Section 303.005 to take certain actions to recover certain costs under certain conditions. Makes nonsubstantive changes.

(b) Prohibits a person from suspending, terminating, or otherwise disciplining, discriminating against, or retaliating against a person who takes certain actions, including advising a nurse of the nurse's right to report under this subchapter to request a nursing peer review committee determination under Section 303.005, or to refuse to engage in conduct as authorized by Section 301.352. Makes conforming and nonsubstantive changes.

(b-1) Authorizes that a person suspected of violating Subsection (b) be reported to the appropriate licensing agency, and notwithstanding any other provision, authorizes the appropriate licensing agency to impose an administrative penalty not to exceed \$25,000 against the person if the agency finds a violation of Subsection (b). Provides that an administrative penalty imposed under this subsection 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.

(c) Provides that a person who reports under this subchapter, refuses to engage in conduct as authorized by Section 301.352, or requests a nursing peer review committee determination under Section 303.005, or a person who advises a nurse of the nurse's right to report under this subchapter, refuse to engage in conduct as authorized by Section 301.352, or request a nursing peer review committee determination under Section 303.005, has a cause of action against a person who violates Subsection (b), and may recover the greater of actual damages, including damages for mental anguish even if no other injury is shown, or \$5,000; exemplary damages; court costs; and reasonable attorney's fees.

(e) Provides that a person who brings an action under this section has the burden of proof. Provides that it is a rebuttable presumption that the person was suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against for reporting under this subchapter, for refusing to engage in conduct as authorized by Section 301.352 for requesting a peer review committee determination under Section 303.005, or for providing advice to a person regarding reporting under this subchapter, refusing to engage in conduct as authorized by Section 301.352, or requesting a peer review committee determination under Section 303.005, if:

(1) the person was suspended, terminated, or otherwise disciplined, discriminated against, or retaliated against within 60 days after the date the report, refusal, or request was made or the advice was given; and

(2) the Texas Board of Nursing or a court determines that the report that is the subject of the cause of action was authorized or required under certain sections, and made in good faith; the request for peer review committee determination that is the subject of the cause of action was authorized under Section 303.005 and made in good faith; the refusal to engage in conduct was authorized by Section 301.352; or the advice that is the subject of the cause of action was given in good faith. Makes a conforming and a nonsubstantive change.

SECTION 7. Amends Section 303.001(5), Occupations Code, to redefine "peer review."

SECTION 8. Amends Section 303.005(a-1), Occupations Code, to provide that for purposes of this section, a nurse or nurse administrator acts in good faith, rather than does not act in good faith, in connection with a request made or an action taken by the nurse or nurse administrator if there is, rather than is not, a reasonable factual or legal basis for the request or action.

SECTION 9. (a) Makes application of Section 301.413(b-1), Occupations Code, as added by this Act, and Sections 301.352, 301.402, 301.4025, and 301.413(b), Occupations Code, as amended by this Act, to a violation that occurs on or after the effective date of this Act, prospective.

(b) Makes application of Section 301.412, Occupations Code, as amended by this Act, to a report made on or after the effective date of this Act, prospective.

(c) Makes application of Sections 301.413(a), (c), and (e), Occupations Code, as amended by this Act, to an action commenced on or after the effective date of this Act, prospective.

SECTION 10. Effective date: September 1, 2011.