

1-1 By: Nelson S.B. No. 192
1-2 (In the Senate - Filed November 9, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 7, 2011, reported favorably by the following vote:
1-5 Yeas 9, Nays 0; March 7, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to patient advocacy activities by nurses and certain other
1-9 persons; providing an administrative penalty.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsection (a), Section 301.352, Occupations
1-12 Code, is amended to read as follows:

1-13 (a) A person may not suspend, terminate, or otherwise
1-14 discipline, ~~[or]~~ discriminate against, or retaliate against:

1-15 (1) a nurse who refuses to engage in an act or omission
1-16 as provided by Subsection (a-1); or

1-17 (2) a person who advises a nurse of the nurse's rights
1-18 under this section.

1-19 SECTION 2. Subchapter I, Chapter 301, Occupations Code, is
1-20 amended by adding Section 301.4011 to read as follows:

1-21 Sec. 301.4011. GOOD FAITH REPORT BY NURSE. In this
1-22 subchapter, a report is considered to be made in good faith if:

1-23 (1) the person reporting believed that the report was
1-24 required or authorized; and

1-25 (2) there was a reasonable factual or legal basis for
1-26 that belief.

1-27 SECTION 3. Section 301.402, Occupations Code, is amended by
1-28 amending Subsection (f) and adding Subsection (g) to read as
1-29 follows:

1-30 (f) A person may not suspend or terminate the employment of,
1-31 or otherwise discipline, ~~[or]~~ discriminate against, or retaliate
1-32 against, a person who:

1-33 (1) reports in good faith~~[, without malice,]~~ under
1-34 this section; or

1-35 (2) advises a nurse of the nurse's rights and
1-36 obligations under this section.

1-37 (g) A violation of Subsection (f) ~~[this subsection]~~ is
1-38 subject to Section 301.413.

1-39 SECTION 4. Section 301.4025, Occupations Code, is amended
1-40 by amending Subsection (c) and adding Subsection (d) to read as
1-41 follows:

1-42 (c) A person may not suspend or terminate the employment of,
1-43 or otherwise discipline, ~~[or]~~ discriminate against, or retaliate
1-44 against, a person who:

1-45 (1) reports in good faith~~[, without malice,]~~ under
1-46 this section; or

1-47 (2) advises a nurse of the nurse's right to report
1-48 under this section.

1-49 (d) A violation of Subsection (c) ~~[this subsection]~~ is
1-50 subject to Section 301.413.

1-51 SECTION 5. Section 301.412, Occupations Code, is amended to
1-52 read as follows:

1-53 Sec. 301.412. REPORTING IMMUNITY. A person who in good
1-54 faith~~[, without malice,]~~ makes a report required or authorized~~[, or~~
1-55 ~~reasonably believed to be required or authorized,]~~ under this
1-56 subchapter, or a person who advises a nurse of the nurse's right or
1-57 obligation to report under this subchapter:

1-58 (1) is immune from civil and criminal liability that,
1-59 in the absence of the immunity, might result from making the report
1-60 or giving the advice; and

1-61 (2) may not be subjected to other retaliatory action
1-62 as a result of making the report or giving the advice.

1-63 SECTION 6. Section 301.413, Occupations Code, is amended by
1-64 amending Subsections (a), (b), (c), and (e) and adding Subsection

2-1 (b-1) to read as follows:

2-2 (a) A person ~~[named as a defendant in a civil action or~~
 2-3 ~~subjected to other retaliatory action as a result of filing a report~~
 2-4 ~~required, authorized, or reasonably believed to be required or~~
 2-5 ~~authorized under this subchapter as a result of refusing to engage~~
 2-6 ~~in conduct as authorized by Section 301.352, or as a result of~~
 2-7 ~~requesting in good faith a nursing peer review determination under~~
 2-8 ~~Section 303.005,]~~ may file a counterclaim in a [the] pending action
 2-9 or prove a cause of action in a subsequent suit to recover defense
 2-10 costs, including reasonable attorney's fees and actual and punitive
 2-11 damages, if:

2-12 (1) the person is named as a defendant in a civil
 2-13 action or subjected to other retaliatory action as a result of:

2-14 (A) filing a report required or authorized, or
 2-15 reasonably believed to be required or authorized, under this
 2-16 subchapter as a result of refusing to engage in conduct as
 2-17 authorized by Section 301.352;

2-18 (B) requesting in good faith a nursing peer
 2-19 review committee determination under Section 303.005; or

2-20 (C) providing advice to a person regarding:

2-21 (i) filing a report required or authorized,
 2-22 or reasonably believed to be required or authorized, under this
 2-23 subchapter as a result of refusing to engage in conduct as
 2-24 authorized by Section 301.352; or

2-25 (ii) requesting in good faith a nursing
 2-26 peer review committee determination under Section 303.005; and

2-27 (2) the suit or retaliatory action is determined to be
 2-28 frivolous, unreasonable, or taken in bad faith.

2-29 (b) A person may not suspend, terminate, or otherwise
 2-30 discipline, ~~[or]~~ discriminate against, or retaliate against a
 2-31 person who:

2-32 (1) reports in good faith~~[, without malice,]~~ under
 2-33 this subchapter;

2-34 (2) requests, in good faith, a nursing peer review
 2-35 committee determination under Section 303.005; ~~[or]~~

2-36 (3) refuses to engage in conduct as authorized by
 2-37 Section 301.352; or

2-38 (4) advises a nurse of the nurse's right to:

2-39 (A) report under this subchapter;

2-40 (B) request a nursing peer review committee
 2-41 determination under Section 303.005; or

2-42 (C) refuse to engage in conduct as authorized by
 2-43 Section 301.352.

2-44 (b-1) A person suspected of violating Subsection (b) may be
 2-45 reported to the appropriate licensing agency and, notwithstanding
 2-46 any other provision, that agency may impose an administrative
 2-47 penalty not to exceed \$25,000 against the person if the agency finds
 2-48 a violation of Subsection (b). An administrative penalty imposed
 2-49 under this subsection is in addition to other penalties the agency
 2-50 is authorized to impose and is subject to the procedural
 2-51 requirements applicable to the appropriate licensing agency.

2-52 (c) A person who reports under this subchapter, refuses to
 2-53 engage in conduct as authorized by Section 301.352, or requests a
 2-54 nursing peer review committee determination under Section 303.005,
 2-55 or a person who advises a nurse of the nurse's right to report under
 2-56 this subchapter, refuse to engage in conduct as authorized by
 2-57 Section 301.352, or request a nursing peer review committee
 2-58 determination under Section 303.005, has a cause of action against
 2-59 a person who violates Subsection (b), and may recover:

2-60 (1) the greater of:

2-61 (A) actual damages, including damages for mental
 2-62 anguish even if no other injury is shown; or

2-63 (B) \$5,000;

2-64 (2) exemplary damages;

2-65 (3) court costs; and

2-66 (4) reasonable attorney's fees.

2-67 (e) A person who brings an action under this section has the
 2-68 burden of proof. It is a rebuttable presumption that the person was
 2-69 suspended, terminated, or otherwise disciplined, ~~[or]~~

3-1 discriminated against, or retaliated against for reporting under
 3-2 this subchapter, for refusing to engage in conduct as authorized by
 3-3 Section 301.352, [~~or~~] for requesting a peer review committee
 3-4 determination under Section 303.005, or for providing advice to a
 3-5 person regarding reporting under this subchapter, refusing to
 3-6 engage in conduct as authorized by Section 301.352, or requesting a
 3-7 peer review committee determination under Section 303.005 if:

3-8 (1) the person was suspended, terminated, or otherwise
 3-9 disciplined, [~~or~~] discriminated against, or retaliated against
 3-10 within 60 days after the date the report, refusal, or request was
 3-11 made or the advice was given; and

3-12 (2) the board or a court determines that:

3-13 (A) the report that is the subject of the cause of
 3-14 action was:

3-15 (i) authorized or required under Section
 3-16 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408,
 3-17 301.409, or 301.410; and

3-18 (ii) made in good faith [~~without malice~~];

3-19 (B) the request for a peer review committee
 3-20 determination that is the subject of the cause of action was:

3-21 (i) authorized under Section 303.005; and

3-22 (ii) made in good faith; [~~or~~]

3-23 (C) the refusal to engage in conduct was
 3-24 authorized by Section 301.352; or

3-25 (D) the advice that is the subject of the cause of
 3-26 action was given in good faith.

3-27 SECTION 7. Subdivision (5), Section 303.001, Occupations
 3-28 Code, is amended to read as follows:

3-29 (5) "Peer review" means the evaluation of nursing
 3-30 services, the qualifications of a nurse, the quality of patient
 3-31 care rendered by a nurse, the merits of a complaint concerning a
 3-32 nurse or nursing care, and a determination or recommendation
 3-33 regarding a complaint. The term includes:

3-34 (A) the evaluation of the accuracy of a nursing
 3-35 assessment and observation and the appropriateness and quality of
 3-36 the care rendered by a nurse;

3-37 (B) a report made to a nursing peer review
 3-38 committee concerning an activity under the committee's review
 3-39 authority;

3-40 (C) a report made by a nursing peer review
 3-41 committee to another committee or to the board as permitted or
 3-42 required by law; [~~and~~]

3-43 (D) implementation of a duty of a nursing peer
 3-44 review committee by a member, an agent, or an employee of the
 3-45 committee; and

3-46 (E) the provision of information, advice, and
 3-47 assistance to nurses and other persons relating to:

3-48 (i) the rights and obligations of and
 3-49 protections for nurses who raise care concerns or report under
 3-50 Chapter 301 or other state or federal law;

3-51 (ii) the rights and obligations of and
 3-52 protections for nurses who request nursing peer review under this
 3-53 chapter;

3-54 (iii) nursing practice and patient care
 3-55 concerns; and

3-56 (iv) the resolution of workplace and
 3-57 practice questions relating to nursing and patient care.

3-58 SECTION 8. Subsection (a-1), Section 303.005, Occupations
 3-59 Code, is amended to read as follows:

3-60 (a-1) For purposes of this section, a nurse or nurse
 3-61 administrator acts [~~does not act~~] in good faith in connection with a
 3-62 request made or an action taken by the nurse or nurse administrator
 3-63 if there is [~~not~~] a reasonable factual or legal basis for the
 3-64 request or action.

3-65 SECTION 9. (a) Subsection (b-1), Section 301.413,
 3-66 Occupations Code, as added by this Act, and Sections 301.352,
 3-67 301.402, and 301.4025 and Subsection (b), Section 301.413,
 3-68 Occupations Code, as amended by this Act, apply only to a violation
 3-69 that occurs on or after the effective date of this Act. A violation

4-1 that occurs before the effective date of this Act is covered by the
4-2 law in effect on the date the violation occurred, and the former law
4-3 is continued in effect for that purpose.

4-4 (b) Section 301.412, Occupations Code, as amended by this
4-5 Act, applies only to a report made on or after the effective date of
4-6 this Act. A report made before the effective date of this Act is
4-7 covered by the law in effect on the date the report was made, and the
4-8 former law is continued in effect for that purpose.

4-9 (c) Subsections (a), (c), and (e), Section 301.413,
4-10 Occupations Code, as amended by this Act, apply only to an action
4-11 commenced on or after the effective date of this Act. An action
4-12 commenced before the effective date of this Act is covered by the
4-13 law in effect on the date the action was commenced, and the former
4-14 law is continued in effect for that purpose.

4-15 SECTION 10. This Act takes effect September 1, 2011.

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