

Amend SB 993 (engrossed version) as follows:

(1) In the recital to SECTION 5 of the bill (page 3, line 17) strike "(b) and (e)" and substitute "(b), (e), and (f)".

(2) In SECTION 5 of the bill, following amended Subsection (e), Section 301.402, Occupations Code (page 4, between lines 7 and 8), insert the following:

(f) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who reports, without malice, under this section. A violation of this subsection is subject to Section 301.413 ~~[nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or accreditation standards. For purposes of this subsection, the employer or entity includes an employee or agent of the employer or entity].~~

(3) Strike SECTION 13 of the bill (page 8, line 23, through page 9, line 5) and substitute the following appropriately numbered SECTION:

SECTION _____. Section 303.005, Occupations Code, is amended by adding Subsections (a-1) and (i) and amending Subsections (b), (d), and (h) to read as follows:

(a-1) For purposes of this section, a nurse or nurse administrator 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 not a reasonable factual or legal basis for the request or action.

(b) If a person who is required to establish a nursing peer review committee under Section 303.0015 ~~[regularly employs, hires, or otherwise contracts for the services of at least 10 nurses]~~ requests a nurse ~~[one of those nurses]~~ to engage in conduct that the nurse believes violates a nurse's duty to a patient, the nurse may request, on a form developed or approved by the board, a determination by a nursing peer review committee under this chapter of whether the conduct violates a nurse's duty to a patient.

(d) If a nurse requests a peer review determination under Subsection (b) and refuses to engage in the requested conduct pending the peer review, the determination ~~[The determinations]~~ of the peer review committee shall be considered in any ~~[a]~~ decision by the nurse's employer to discipline the nurse for the refusal to engage in the requested conduct, but the determination is ~~[determinations are]~~ not binding if a nurse administrator believes in good faith that the peer review committee has incorrectly determined a nurse's duty. This subsection does not affect the protections provided by Subsection (c)(1) or Section 301.352.

(h) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a nurse who in good faith requests a peer review determination under this section or a person who advises a nurse of the nurse's right to request a determination or of the procedures for requesting a determination. A violation of this subsection is subject to Section 301.413 ~~[A person is not required to provide a peer review determination under this section for a request made by a registered nurse, unless the person regularly employs, hires, or otherwise contracts for the services of at least five registered nurses]~~.

(i) A person who is required to provide, on request, a nursing peer review committee determination under Subsection (b) shall adopt and implement a policy to inform nurses of the right to request a nursing peer review committee determination and the procedure for making a request.

(4) In Subdivision (3), SECTION 16 of the bill (page 10, line 19), strike "Subsection (a)" and substitute "Subsections (a) and (c)".

(5) Strike SECTION 18 of the bill and substitute the following appropriately numbered SECTION:

SECTION _____. This Act takes effect September 1, 2007.

(6) Add the following appropriately numbered SECTIONS to the bill:

SECTION _____. Section 301.352, Occupations Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (f) to read as follows:

(a) A person may not suspend, terminate, or otherwise

discipline or discriminate against a nurse who refuses to engage in an act or omission as provided by Subsection (a-1).

(a-1) A nurse may refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the board under Subchapter I, that constitutes a minor incident, or that violates this chapter or a board rule if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission:

(1) constitutes grounds for reporting the nurse to the board; or

(2) is a violation of this chapter or a rule of the board.

(f) A violation of this section is subject to Section 301.413.

SECTION _____. The heading to Section 301.402, Occupations Code, is amended to read as follows:

Sec. 301.402. MANDATORY REPORT BY NURSE [~~DUTY OF NURSE TO REPORT~~].

SECTION _____. Subchapter I, Chapter 301, Occupations Code, is amended by adding Section 301.4025 to read as follows:

Sec. 301.4025. OPTIONAL REPORT BY NURSE. (a) In a written, signed report to the appropriate licensing board or accrediting body, a nurse may report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to:

(1) minimum standards of acceptable and prevailing professional practice, for a report made regarding a practitioner; or

(2) statutory, regulatory, or accreditation standards, for a report made regarding an agency or facility.

(b) A nurse may report to the nurse's employer or another entity at which the nurse is authorized to practice any situation that the nurse has reasonable cause to believe exposes a patient to substantial risk of harm as a result of a failure to provide patient care that conforms to minimum standards of acceptable and prevailing professional practice or to statutory, regulatory, or

accreditation standards. For purposes of this subsection, an employer or entity includes an employee or agent of the employer or entity.

(c) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who reports, without malice, under this section. A violation of this subsection is subject to Section 301.413.

SECTION _____. Subsections (a), (b), (c), and (e), Section 301.413, Occupations Code, are amended to read as follows:

(a) A person named as a 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, may file a counterclaim in the 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 the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.

(b) A person may not suspend or terminate the employment of, or otherwise discipline or discriminate against, a person who:

(1) reports, without malice, under this subchapter; or
(2) requests, in good faith, a nursing peer review determination under Section 303.005.

(c) A person who reports under this subchapter, refuses to engage in conduct as authorized by Section 301.352, or requests a nursing peer review determination under Section 303.005 has a cause of action against a person who violates Subsection (b), and may recover:

- (1) the greater of:
 - (A) actual damages, including damages for mental anguish even if no other injury is shown; or
 - (B) \$5,000 [~~\$1,000~~];
- (2) exemplary damages;
- (3) court costs; and
- (4) reasonable attorney's fees.

(e) A person who brings an action under this section has the burden of proof. It is a rebuttable presumption that the person's employment was suspended or terminated for reporting under this subchapter, for refusing to engage in conduct as authorized by Section 301.352, or for requesting a peer review committee determination under Section 303.005 if:

(1) the person was suspended or terminated within 60 days after the date the report, refusal, or request was made; and

(2) the board or a court determines that:

(A) the report that is the subject of the cause of action was:

(i) [~~(A)~~] authorized or required under Section 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408, 301.409, or 301.410; and

(ii) [~~(B)~~] made without malice;

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

(i) authorized under Section 303.005; and

(ii) made in good faith; or

(C) the refusal to engage in conduct was authorized by Section 301.352.

(7) Renumber the SECTIONS of the bill accordingly.