

BILL ANALYSIS

S.B. 761
By: Nelson
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Texas law provides extensive protections to nurses reporting patient care concerns. These protections apply not only to reports to regulatory and licensing agencies but also to reports to accreditation organizations and to internal reports within a facility. However, these protections have been enacted incrementally over 20 years. Consequently, current law relating to nurses making patient safety reports, and the protections available to the is unconsolidated and often unclear.

S.B. 761 consolidates statutory provisions regarding patient safety reports by a nurse and nurse protection provisions; establishes when a request for a nursing peer review determination is deemed to have been made in good faith. Increases the minimum recovery for nurses who are retaliated against for filing a report, refusing to engage in a reportable conduct, or requesting a nursing peer review determination; clarifies that a nurse who refuses to engage in reportable conduct has the same remedies as nurses retaliated against for reporting unsafe care; prohibits retaliation for advising nurses of their right to request a nursing peer review determination; requires facilities to implement and enforce policies to inform nurses of their right to request a nursing peer review determination.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Section 301.352, Occupations Code, by amending Subsection (a) and adding Subsections (a-1) and (f), as follows:

(a) Prohibits a person from suspending, terminating, or otherwise disciplining or discriminating against a nurse who refuses to engage in an act or omission as provided by Subsection (a-1).

(a-1) Authorizes a nurse to refuse to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the Board of Nurse Examiners (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 constitutes grounds for reporting the nurse to the board, or is a violation of this chapter or a rule of the board.

(f) Provides that a violation of this section is subject to Section 301.413 (Retaliatory Action).

SECTION 2. Amends the heading to Section 301.402, Occupations Code, to read as follows:

Sec. 301.402. MANDATORY REPORT BY NURSE.

SECTION 3. Amends Section 301.402(f), Occupations Code, as follows:

(f) Prohibits a person from suspending or terminating the employment of, or otherwise disciplining or discriminating against, a person who reports, without malice, under this

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section. Provides that a violation under this subsection is subject to Section 301.413. Deletes existing text regarding to whom a nurse is authorized to report any situation that 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 statutory, regulatory, or accreditation standards.

SECTION 4. Amend Subchapter I, Chapter 301, Occupations Code, by adding Section 301.4025, as follows:

Sec. 301.4025. OPTIONAL REPORT BY NURSE. (a) Authorizes a nurse, in a written, signed report to the appropriate licensing board or accrediting body, to 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 the minimum standards of acceptable and prevailing professional practice, for a report made regarding a practitioner; or statutory, regulatory or accreditation standards, for a report made regarding an agency or facility.

(b) Authorizes the nurse to 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. Provides that for the purpose of this subsection, an employer or entity includes an employee or agent of the employer or entity.

(c) Prohibits a person from suspending or terminating the employment of, or otherwise disciplining or discriminating against, a person who reports, without malice, under this section. Provides that a violation of this subsection is subject to Section 301.413.

SECTION 5. Amends Sections 301.413(a), (b), (c), and (e), Occupations Code, as follows:

(a) Authorizes a person named as a defendant in a civil action or subjected to other retaliatory action as a result of filing a certain report 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 file a counter claim 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) Prohibits a person from suspending or terminating the employment of, or otherwise disciplining or discriminating against, a person who requests, in good faith, a nursing peer review determination under Section 303.005. Makes conforming changes.

(c) Makes conforming changes. Increases the amount for actual damages that may be recovered from \$1,000 to \$5,000.

(e) Provides that it is a rebuttable presumption that a person's employment was suspended or terminated for reporting under the subchapter, for refusing to engage in certain conduct as authorized by Section 301.352, or requesting a peer review committee determination under Section 303.005, if the refusal or request was made within certain specified conditions. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 303.005, Occupation Code, by adding Subsections (a-1), (i), and (j), and amending Subsection (d), as follows:

(a-1) Provides that 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.

(d) Requires that when a nurse requests a peer review determination under Subsection (b) and refuses to engage in the requested conduct pending the peer review, the determination of the peer review committee is considered in any decision by the nurse's employer to discipline the nurse for the refusal to engage in the requested conduct. Provides that the determination is not binding if a nurse administrator believes in good faith that the peer review committee has incorrectly determined a nurse's duty. Provides that this subsection does not affect the protections provided by Subsection (c)(1) or Section 301.352.

(i) Prohibits a person from suspending or terminating the employment of, or otherwise disciplining or discriminating 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. Provides that a violation of this subsection is subject to Section 301.413.

(j) Requires a person who is required to provide, on request, a nursing peer review committee determination under Subsection (b) to 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.

SECTION 7. Repealer: Section 301.402(c) (relating to a nurse filing a report if the nurse believes there is reasonable cause to believe a practitioner, agency, or facility has exposed a patient to substantial risk of harm due to certain practices), Occupations Code.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 2007.

EFFECTIVE DATE

The effective date is September 1, 2007.