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S.B. No. 761

A BILL TO BE ENTITLED

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AN ACT

relating to reports by nurses of certain conduct and protection from retaliation for those nurses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. 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 2. The heading to Section 301.402, Occupations Code, is amended to read as follows:

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

3 SECTION 3. Subsection (f), Section 301.402, Occupations
4 Code, is amended to read as follows:

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

17 SECTION 4. Subchapter I, Chapter 301, Occupations Code, is
18 amended by adding Section 301.4025 to read as follows:

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

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

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

3 (b) A nurse may report to the nurse's employer or another
4 entity at which the nurse is authorized to practice any situation
5 that the nurse has reasonable cause to believe exposes a patient to
6 substantial risk of harm as a result of a failure to provide patient
7 care that conforms to minimum standards of acceptable and
8 prevailing professional practice or to statutory, regulatory, or
9 accreditation standards. For purposes of this subsection, an
10 employer or entity includes an employee or agent of the employer or
11 entity.

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

16 SECTION 5. Subsections (a), (b), (c), and (e), Section
17 301.413, Occupations Code, are amended to read as follows:

18 (a) A person named as a defendant in a civil action or
19 subjected to other retaliatory action as a result of filing a report
20 required, authorized, or reasonably believed to be required or
21 authorized under this subchapter as a result of refusing to engage
22 in conduct as authorized by Section 301.352, or as a result of
23 requesting in good faith a nursing peer review determination under
24 Section 303.005, may file a counterclaim in the pending action or
25 prove a cause of action in a subsequent suit to recover defense
26 costs, including reasonable attorney's fees and actual and punitive
27 damages, if the suit or retaliatory action is determined to be

1 frivolous, unreasonable, or taken in bad faith.

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

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

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

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

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

- 25 (1) the person was suspended or terminated within 60
26 days after the date the report, refusal, or request was made; and
27 (2) the board or a court determines that:

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

3 (i) [~~(A)~~] authorized or required under
4 Section 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407,
5 301.408, 301.409, or 301.410; and

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

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

9 (i) authorized under Section 303.005; and

10 (ii) made in good faith; or

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

13 SECTION 6. Section 303.005, Occupations Code, is amended by
14 adding Subsections (a-1), (i), and (j) and amending Subsection (d)
15 to read as follows:

16 (a-1) For purposes of this section, a nurse or nurse
17 administrator does not act in good faith in connection with a
18 request made or an action taken by the nurse or nurse administrator
19 if there is not a reasonable factual or legal basis for the request
20 or action.

21 (d) If a nurse requests a peer review determination under
22 Subsection (b) and refuses to engage in the requested conduct
23 pending the peer review, the determination [~~The determinations~~] of
24 the peer review committee shall be considered in any [~~a~~] decision by
25 the nurse's employer to discipline the nurse for the refusal to
26 engage in the requested conduct, but the determination is
27 [~~determinations are~~] not binding if a nurse administrator believes

1 in good faith that the peer review committee has incorrectly
2 determined a nurse's duty. This subsection does not affect the
3 protections provided by Subsection (c)(1) or Section 301.352.

4 (i) A person may not suspend or terminate the employment of,
5 or otherwise discipline or discriminate against, a nurse who in
6 good faith requests a peer review determination under this section
7 or a person who advises a nurse of the nurse's right to request a
8 determination or of the procedures for requesting a determination.
9 A violation of this subsection is subject to Section 301.413.

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

15 SECTION 7. Subsection (c), Section 301.402, Occupations
16 Code, is repealed.

17 SECTION 8. The changes in law made by this Act apply only to
18 conduct that occurs on or after the effective date of this Act.
19 Conduct that occurs before the effective date of this Act is
20 governed by the law in effect when the conduct occurs, and the
21 former law is continued in effect for that purpose.

22 SECTION 9. This Act takes effect September 1, 2007.