

By: Nelson

S.B. No. 761

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to reports by nurses of certain conduct and protection  
3 from retaliation for those nurses.

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

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

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

9 SECTION 2. Section 301.402(f), Occupations Code, is amended  
10 to read as follows:

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

23 SECTION 3. Subchapter I, Chapter 301, Occupations Code, is  
24 amended by adding Section 301.4025 to read as follows:

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

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

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

12       (b) A nurse may report to the nurse's employer or another  
13 entity at which the nurse is authorized to practice any situation  
14 that the nurse has reasonable cause to believe exposes a patient to  
15 substantial risk of harm as a result of a failure to provide patient  
16 care that conforms to minimum standards of acceptable and  
17 prevailing professional practice or to statutory, regulatory, or  
18 accreditation standards. For purposes of this subsection, an  
19 employer or entity includes an employee or agent of the employer or  
20 entity.

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

25       SECTION 4. Sections 301.413(a), (b), (c), and (e),  
26 Occupations Code, are amended to read as follows:

27       (a) A person named as a defendant in a civil action or

1 subjected to other retaliatory action as a result of filing a report  
2 required, authorized, or reasonably believed to be required or  
3 authorized under this subchapter or as a result of requesting in  
4 good faith a nursing peer review determination under Section  
5 303.005 may file a counterclaim in the pending action or prove a  
6 cause of action in a subsequent suit to recover defense costs,  
7 including reasonable attorney's fees and actual and punitive  
8 damages, if the suit or retaliatory action is determined to be  
9 frivolous, unreasonable, or taken in bad faith.

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

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

15 (c) A person who reports under this subchapter or requests a  
16 nursing peer review determination under Section 303.005 has a cause  
17 of action against a person who violates Subsection (b), and may  
18 recover:

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

26 (e) A person who brings an action under this section has the  
27 burden of proof. It is a rebuttable presumption that the person's

1 employment was suspended or terminated for reporting under this  
2 subchapter or for requesting a peer review committee determination  
3 under Section 303.005 if:

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

6 (2) the board or a court determines that:

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

9 (i) [~~(A)~~] authorized or required under  
10 Section 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407,  
11 301.408, 301.409, or 301.410; and

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

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

15 (i) authorized under Section 303.005; and

16 (ii) made in good faith.

17 SECTION 5. Section 303.005, Occupations Code, is amended by  
18 adding Subsections (a-1) and (i) and amending Subsection (d) to  
19 read as follows:

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

25 (d) If a nurse requests a peer review determination under  
26 Subsection (b) and refuses to engage in the requested conduct  
27 pending the peer review, the determination [~~The determinations~~] of

1 the peer review committee shall be considered in any ~~[a]~~ decision by  
2 the nurse's employer to discipline the nurse for the refusal to  
3 engage in the requested conduct, but the determination is  
4 ~~[determinations are]~~ not binding if a nurse administrator believes  
5 in good faith that the peer review committee has incorrectly  
6 determined a nurse's duty. This subsection does not affect the  
7 protections provided by Subsection (c)(1) or Section 301.352.

8 (i) A person may not suspend or terminate the employment of,  
9 or otherwise discipline or discriminate against, a nurse who in  
10 good faith requests a peer review determination under this section.  
11 A violation of this subsection is subject to Section 301.413.

12 SECTION 6. Section 301.402(c), Occupations Code, is  
13 repealed.

14 SECTION 7. The changes in law made by this Act apply only to  
15 conduct that occurs on or after the effective date of this Act.  
16 Conduct that occurs before the effective date of this Act is  
17 governed by the law in effect when the conduct occurs, and the  
18 former law is continued in effect for that purpose.

19 SECTION 8. This Act takes effect September 1, 2007.