

1-1 By: Nelson S.B. No. 761
1-2 (In the Senate - Filed February 20, 2007; March 6, 2007,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 19, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 March 19, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 761 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to reports by nurses of certain conduct and protection
1-11 from retaliation for those nurses.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 301.352, Occupations Code, is amended by
1-14 amending Subsection (a) and adding Subsections (a-1) and (f) to
1-15 read as follows:

1-16 (a) A person may not suspend, terminate, or otherwise
1-17 discipline or discriminate against a nurse who refuses to engage in
1-18 an act or omission as provided by Subsection (a-1).

1-19 (a-1) A nurse may refuse to engage in an act or omission
1-20 relating to patient care that would constitute grounds for
1-21 reporting the nurse to the board under Subchapter I, that
1-22 constitutes a minor incident, or that violates this chapter or a
1-23 board rule if the nurse notifies the person at the time of the
1-24 refusal that the reason for refusing is that the act or omission:

1-25 (1) constitutes grounds for reporting the nurse to the
1-26 board; or

1-27 (2) is a violation of this chapter or a rule of the
1-28 board.

1-29 (f) A violation of this section is subject to Section
1-30 301.413.

1-31 SECTION 2. The heading to Section 301.402, Occupations
1-32 Code, is amended to read as follows:

1-33 Sec. 301.402. MANDATORY REPORT BY NURSE [~~DUTY OF NURSE TO~~
1-34 ~~REPORT~~].

1-35 SECTION 3. Subsection (f), Section 301.402, Occupations
1-36 Code, is amended to read as follows:

1-37 (f) A person may not suspend or terminate the employment of,
1-38 or otherwise discipline or discriminate against, a person who
1-39 reports, without malice, under this section. A violation of this
1-40 subsection is subject to Section 301.413 [~~nurse may report to the~~
1-41 ~~nurse's employer or another entity at which the nurse is authorized~~
1-42 ~~to practice any situation that the nurse has reasonable cause to~~
1-43 ~~believe exposes a patient to substantial risk of harm as a result of~~
1-44 ~~a failure to provide patient care that conforms to minimum~~
1-45 ~~standards of acceptable and prevailing professional practice or to~~
1-46 ~~statutory, regulatory, or accreditation standards. For purposes of~~
1-47 ~~this subsection, the employer or entity includes an employee or~~
1-48 ~~agent of the employer or entity].~~

1-49 SECTION 4. Subchapter I, Chapter 301, Occupations Code, is
1-50 amended by adding Section 301.4025 to read as follows:

1-51 Sec. 301.4025. OPTIONAL REPORT BY NURSE. (a) In a
1-52 written, signed report to the appropriate licensing board or
1-53 accrediting body, a nurse may report a licensed health care
1-54 practitioner, agency, or facility that the nurse has reasonable
1-55 cause to believe has exposed a patient to substantial risk of harm
1-56 as a result of failing to provide patient care that conforms to:

1-57 (1) minimum standards of acceptable and prevailing
1-58 professional practice, for a report made regarding a practitioner;
1-59 or

1-60 (2) statutory, regulatory, or accreditation
1-61 standards, for a report made regarding an agency or facility.

1-62 (b) A nurse may report to the nurse's employer or another
1-63 entity at which the nurse is authorized to practice any situation

2-1 that the nurse has reasonable cause to believe exposes a patient to
 2-2 substantial risk of harm as a result of a failure to provide patient
 2-3 care that conforms to minimum standards of acceptable and
 2-4 prevailing professional practice or to statutory, regulatory, or
 2-5 accreditation standards. For purposes of this subsection, an
 2-6 employer or entity includes an employee or agent of the employer or
 2-7 entity.

2-8 (c) A person may not suspend or terminate the employment of,
 2-9 or otherwise discipline or discriminate against, a person who
 2-10 reports, without malice, under this section. A violation of this
 2-11 subsection is subject to Section 301.413.

2-12 SECTION 5. Subsections (a), (b), (c), and (e), Section
 2-13 301.413, Occupations Code, are amended to read as follows:

2-14 (a) A person named as a defendant in a civil action or
 2-15 subjected to other retaliatory action as a result of filing a report
 2-16 required, authorized, or reasonably believed to be required or
 2-17 authorized under this subchapter as a result of refusing to engage
 2-18 in conduct as authorized by Section 301.352, or as a result of
 2-19 requesting in good faith a nursing peer review determination under
 2-20 Section 303.005, may file a counterclaim in the pending action or
 2-21 prove a cause of action in a subsequent suit to recover defense
 2-22 costs, including reasonable attorney's fees and actual and punitive
 2-23 damages, if the suit or retaliatory action is determined to be
 2-24 frivolous, unreasonable, or taken in bad faith.

2-25 (b) A person may not suspend or terminate the employment of,
 2-26 or otherwise discipline or discriminate against, a person who:

- 2-27 (1) reports, without malice, under this subchapter; or
 - 2-28 (2) requests, in good faith, a nursing peer review
- 2-29 determination under Section 303.005.

2-30 (c) A person who reports under this subchapter, refuses to
 2-31 engage in conduct as authorized by Section 301.352, or requests a
 2-32 nursing peer review determination under Section 303.005 has a cause
 2-33 of action against a person who violates Subsection (b), and may
 2-34 recover:

- 2-35 (1) the greater of:
 - 2-36 (A) actual damages, including damages for mental
 - 2-37 anguish even if no other injury is shown; or
 - 2-38 (B) \$5,000 [~~\$1,000~~];
- 2-39 (2) exemplary damages;
- 2-40 (3) court costs; and
- 2-41 (4) reasonable attorney's fees.

2-42 (e) A person who brings an action under this section has the
 2-43 burden of proof. It is a rebuttable presumption that the person's
 2-44 employment was suspended or terminated for reporting under this
 2-45 subchapter, for refusing to engage in conduct as authorized by
 2-46 Section 301.352, or for requesting a peer review committee
 2-47 determination under Section 303.005 if:

2-48 (1) the person was suspended or terminated within 60
 2-49 days after the date the report, refusal, or request was made; and

2-50 (2) the board or a court determines that:

2-51 (A) the report that is the subject of the cause of
 2-52 action was:

2-53 (i) [~~(A)~~] authorized or required under
 2-54 Section 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407,
 2-55 301.408, 301.409, or 301.410; and

2-56 (ii) [~~(B)~~] made without malice;

2-57 (B) the request for a peer review committee
 2-58 determination that is the subject of the cause of action was:

2-59 (i) authorized under Section 303.005; and

2-60 (ii) made in good faith; or

2-61 (C) the refusal to engage in conduct was
 2-62 authorized by Section 301.352.

2-63 SECTION 6. Section 303.005, Occupations Code, is amended by
 2-64 adding Subsections (a-1), (i), and (j) and amending Subsection (d)
 2-65 to read as follows:

2-66 (a-1) For purposes of this section, a nurse or nurse
 2-67 administrator does not act in good faith in connection with a
 2-68 request made or an action taken by the nurse or nurse administrator
 2-69 if there is not a reasonable factual or legal basis for the request

3-1 or action.

3-2 (d) If a nurse requests a peer review determination under
3-3 Subsection (b) and refuses to engage in the requested conduct
3-4 pending the peer review, the determination [The determinations] of
3-5 the peer review committee shall be considered in any [a] decision by
3-6 the nurse's employer to discipline the nurse for the refusal to
3-7 engage in the requested conduct, but the determination is
3-8 [determinations are] not binding if a nurse administrator believes
3-9 in good faith that the peer review committee has incorrectly
3-10 determined a nurse's duty. This subsection does not affect the
3-11 protections provided by Subsection (c)(1) or Section 301.352.

3-12 (i) A person may not suspend or terminate the employment of,
3-13 or otherwise discipline or discriminate against, a nurse who in
3-14 good faith requests a peer review determination under this section
3-15 or a person who advises a nurse of the nurse's right to request a
3-16 determination or of the procedures for requesting a determination.
3-17 A violation of this subsection is subject to Section 301.413.

3-18 (j) A person who is required to provide, on request, a
3-19 nursing peer review committee determination under Subsection (b)
3-20 shall adopt and implement a policy to inform nurses of the right to
3-21 request a nursing peer review committee determination and the
3-22 procedure for making a request.

3-23 SECTION 7. Subsection (c), Section 301.402, Occupations
3-24 Code, is repealed.

3-25 SECTION 8. The changes in law made by this Act apply only to
3-26 conduct that occurs on or after the effective date of this Act.
3-27 Conduct that occurs before the effective date of this Act is
3-28 governed by the law in effect when the conduct occurs, and the
3-29 former law is continued in effect for that purpose.

3-30 SECTION 9. This Act takes effect September 1, 2007.

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