

BILL ANALYSIS

H.B. 2719
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Nursing Practice Act provides nurses a right to assert a legal claim based on retaliation against a nurse for engaging in protected patient advocacy activities. Protected patient activities include:

- reporting patient care concerns within the facility;
- refusing to engage in conduct that violates the Nursing Practice Act or rules of the board of nursing;
- requesting safe harbor nursing peer review if a nurse is requested to engage in conduct that the nurse believes would violate the nurse's duty to a patient; and
- reporting licensed practitioners and facilities to their respective licensing boards or accreditation bodies because of failure to meet accepted practice standards.

Section 301.413 of the Nursing Practice Act provides any nurse who is retaliated or discriminated against because of engaging in any of these protected patient advocacy activities the right to file a lawsuit based on that retaliation or discrimination.

Texas courts, however, have ruled the language of Section 301.413 does not clearly express a legislative intent to waive the right of governmental entities not to be sued, that is, there is not a clear waiver of sovereign immunity. Consequently, publicly employed hospital nurses do not have the same right as privately employed hospital nurses to seek legal relief if retaliated against for engaging in protected patient advocacy protections.

Hospitals operated by or on behalf of governmental entities include state hospitals, such as M.D. Anderson, county hospitals, such as Parkland, and hospitals operated by hospital districts. Nurses in these hospitals may have some protections under other laws but those protections are more limited than the protections provided by the Nursing Practice Act.

The public employee whistleblower law applies to all public employees but protects only nurses who report violations of the law by their employers to an appropriate law enforcement authority, which includes a state or federal agency authorized to regulate or enforce the law alleged to be violated. It does not protect the nurse for raising patient care concerns within the facility or for requesting safe harbor nursing peer review. The Health and Safety Code provides whistleblower protections for employees of hospitals, mental health facilities, and treatment facilities. This statute protects any employee, including nurses, from retaliation for reporting a violation of law or a Department of State Health Services rule, including reports to supervisors, administrators, state regulatory agencies, and law enforcement. However, Texas Courts of Appeal appear to be split on whether publicly employed hospital nurses can sue under this provision; the Texas Supreme Court has not ruled on the issue. It is also unclear if this statute covers raising patient care concerns or requesting safe harbor nursing peer review which are covered by the Nursing Practice Act.

H.B. 2719 gives a publicly employed hospital nurse the same rights that a privately employed hospital nurse has to seek a remedy in court for retaliation against a nurse who engaged in protected patient advocacy activities. The bill waives sovereign immunity of a state or local governmental entity from suit and from liability and permits a hospital operated by or on behalf

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of a governmental entity to be sued if the hospital retaliates against a nurse for advocating for the nurse's patient. HB 2719 limits the type of relief and amount of damages a publicly employed hospital nurse may recover to those available to other public employees under the public employee whistleblower law.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2719 amends the Occupations Code to authorize a nurse employed by a hospital operated by or on behalf of a state or local governmental entity who alleges a violation of the provisions prohibiting the suspension or termination of the employment of a person who reports without malice a violation or who requests in good faith a nursing peer review determination to sue the state or local governmental entity. The bill waives the sovereign immunity of the state or local governmental entity from suit and from liability for the limited purpose of allowing the nurse to maintain a lawsuit in state court. The bill applies provisions relating to the relief available to a public employee whose employment is suspended or who is subjected to an adverse personnel action in violation of state law to a lawsuit initiated by a nurse, as described in the bill, and specifies that this relief is in addition to any other remedies a nurse may have under state or federal law as a public employee. The bill defines "local governmental entity," "public employee," "state governmental entity," and "hospital."

EFFECTIVE DATE

September 1, 2009.