

By: Howard of Travis

H.B. No. 575

A BILL TO BE ENTITLED

AN ACT

relating to patient advocacy activities by nurses and certain other persons; providing an administrative penalty.

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

SECTION 1. Section 301.352(a), Occupations Code, is amended to read as follows:

(a) A person may not suspend, terminate, or otherwise discipline, ~~or~~ discriminate against, or retaliate against:

(1) a nurse who refuses to engage in an act or omission as provided by Subsection (a-1); or

(2) a person who advises a nurse of the nurse's rights under this section.

SECTION 2. Subchapter I, Chapter 301, Occupations Code, is amended by adding Section 301.4011 to read as follows:

Sec. 301.4011. GOOD FAITH REPORT BY NURSE. In this subchapter, a report is considered to be made in good faith if:

(1) the person reporting believed that the report was required or authorized; and

(2) there was a reasonable factual or legal basis for that belief.

SECTION 3. Section 301.402, Occupations Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f) A person may not suspend or terminate the employment of,

1 or otherwise discipline, ~~[or]~~ discriminate against, or retaliate
2 against a person who:

3 (1) reports in good faith [~~, without malice,~~] under
4 this section; or

5 (2) advises a nurse of the nurse's rights and
6 obligations under this section.

7 (g) A violation of Subsection (f) [~~this subsection~~] is
8 subject to Section 301.413.

9 SECTION 4. Section 301.4025, Occupations Code, is amended
10 by amending Subsection (c) and adding Subsection (d) to read as
11 follows:

12 (c) A person may not suspend or terminate the employment of,
13 or otherwise discipline, ~~[or]~~ discriminate against, or retaliate
14 against a person who:

15 (1) reports in good faith [~~, without malice,~~] under
16 this section; or

17 (2) advises a nurse of the nurse's right to report
18 under this section.

19 (d) A violation of Subsection (c) [~~this subsection~~] is
20 subject to Section 301.413.

21 SECTION 5. Section 301.412, Occupations Code, is amended to
22 read as follows:

23 Sec. 301.412. REPORTING IMMUNITY. A person who in good
24 faith [~~, without malice,~~] makes a report required or authorized [~~, or reasonably believed to be required or authorized,~~]
25 or a person who advises a nurse of the nurse's right or
26 obligation to report under this subchapter:
27

1 (1) is immune from civil and criminal liability that,
2 in the absence of the immunity, might result from making the report
3 or giving the advice; and

4 (2) may not be subjected to other retaliatory action
5 as a result of making the report or giving the advice.

6 SECTION 6. Section 301.413, Occupations Code, is amended by
7 amending Subsections (a), (b), (c), and (e) and adding Subsections
8 (b-1) and (g) to read as follows:

9 (a) A person [~~named as a defendant in a civil action or~~
10 ~~subjected to other retaliatory action as a result of filing a report~~
11 ~~required, authorized, or reasonably believed to be required or~~
12 ~~authorized under this subchapter as a result of refusing to engage~~
13 ~~in conduct as authorized by Section 301.352, or as a result of~~
14 ~~requesting in good faith a nursing peer review determination under~~
15 ~~Section 303.005,~~] may file a counterclaim in a a [~~the~~] pending action
16 or prove a cause of action in a subsequent suit to recover defense
17 costs, including reasonable attorney's fees and actual and punitive
18 damages, if:

19 (1) the person is named as a defendant in a civil
20 action or subjected to other retaliatory action as a result of:

21 (A) filing a report required or authorized, or
22 reasonably believed to be required or authorized, under this
23 subchapter as a result of refusing to engage in conduct as
24 authorized by Section 301.352;

25 (B) requesting in good faith a nursing peer
26 review determination under Section 303.005; or

27 (C) providing advice to a person regarding:

1 (i) filing a report required or authorized,
2 or reasonably believed to be required or authorized, under this
3 subchapter as a result of refusing to engage in conduct as
4 authorized by Section 301.352; or

5 (ii) requesting in good faith a nursing
6 peer review determination under Section 303.005; and

7 (2) the suit or retaliatory action is determined to be
8 frivolous, unreasonable, or taken in bad faith.

9 (b) A person may not suspend, terminate, or otherwise
10 discipline, ~~or~~ discriminate against, or retaliate against a
11 person who:

12 (1) reports in good faith [~~, without malice,~~] under
13 this subchapter;

14 (2) requests, in good faith, a nursing peer review
15 committee determination under Section 303.005; ~~or~~

16 (3) refuses to engage in conduct as authorized by
17 Section 301.352; or

18 (4) advises a nurse of the nurse's right to:

19 (A) report under this subchapter;

20 (B) request a nursing peer review determination
21 under Section 303.005; or

22 (C) refuse to engage in conduct as authorized by
23 Section 301.352.

24 **(b-1) A person suspected of violating Subsection (b) may be**
25 **reported to the appropriate licensing agency and, notwithstanding**
26 **any other provision, that agency may impose an administrative**
27 **penalty not to exceed \$25,000 against the person if the agency finds**

1 a violation of Subsection (b). An administrative penalty imposed
2 under this subsection is in addition to other penalties the agency
3 is authorized to impose and is subject to the procedural
4 requirements applicable to the appropriate licensing agency.

5 (c) A person who reports under this subchapter, refuses to
6 engage in conduct as authorized by Section 301.352, or requests a
7 nursing peer review committee determination under Section 303.005,
8 or a person who advises a nurse of the nurse's right to report under
9 this subchapter, refuse to engage in conduct as authorized by
10 Section 301.352, or request a nursing peer review determination
11 under Section 303.005, has a cause of action against a person who
12 violates Subsection (b), and may recover:

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

20 (e) A person who brings an action under this section has the
21 burden of proof. It is a rebuttable presumption that the person was
22 suspended, terminated, or otherwise disciplined, ~~or~~
23 discriminated against, or retaliated against for reporting under
24 this subchapter, for refusing to engage in conduct as authorized by
25 Section 301.352, ~~or~~ for requesting a peer review committee
26 determination under Section 303.005, or for providing advice to a
27 person regarding reporting under this subchapter, refusing to

1 engage in conduct as authorized by Section 301.352, or requesting a
2 peer review committee determination under Section 303.005 if:

3 (1) the person was suspended, terminated, or otherwise
4 disciplined, ~~[or]~~ discriminated against, or retaliated against
5 within 60 days after the date the report, refusal, or request was
6 made or the advice was given; and

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

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

10 (i) authorized or required under Section
11 301.402, 301.4025, 301.403, 301.405, 301.406, 301.407, 301.408,
12 301.409, or 301.410; and

13 (ii) made in good faith ~~[without malice]~~;

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

16 (i) authorized under Section 303.005; and

17 (ii) made in good faith; ~~[or]~~

18 (C) the refusal to engage in conduct was
19 authorized by Section 301.352; or

20 (D) the advice that is the subject of the cause of
21 action was given in good faith.

22 (g) A nurse employed, credentialed, privileged, or
23 otherwise authorized to practice at a facility owned or operated by
24 or on behalf of a state or local governmental entity who alleges a
25 violation of Subsection (b) may sue the state or local governmental
26 entity for the relief provided by this section, and the sovereign
27 immunity of the state or local governmental entity from suit and

1 from liability is waived for the limited purpose of allowing the
2 nurse to maintain a lawsuit in state court to obtain that relief.
3 The provisions of Section 554.003, Government Code, relating to the
4 type of relief and the amount of damages available to a public
5 employee apply to a lawsuit under this subsection. The relief
6 provided by this section is in addition to any other remedies a
7 nurse may have under state or federal law as a public employee. In
8 this subsection, "local governmental entity," "public employee,"
9 and "state governmental entity" have the meanings assigned by
10 Section 554.001, Government Code.

11 SECTION 7. Section 303.001(5), Occupations Code, is amended
12 to read as follows:

13 (5) "Peer review" means the evaluation of nursing
14 services, the qualifications of a nurse, the quality of patient
15 care rendered by a nurse, the merits of a complaint concerning a
16 nurse or nursing care, and a determination or recommendation
17 regarding a complaint. The term includes:

18 (A) the evaluation of the accuracy of a nursing
19 assessment and observation and the appropriateness and quality of
20 the care rendered by a nurse;

21 (B) a report made to a nursing peer review
22 committee concerning an activity under the committee's review
23 authority;

24 (C) a report made by a nursing peer review
25 committee to another committee or to the board as permitted or
26 required by law; ~~and~~

27 (D) implementation of a duty of a nursing peer

1 review committee by a member, an agent, or an employee of the
2 committee; and

3 (E) the provision of information, advice, and
4 assistance to nurses and other persons relating to:

5 (i) the rights and obligations of and
6 protections for nurses who raise care concerns or report under
7 Chapter 301 or other state or federal law;

8 (ii) the rights and obligations of and
9 protections for nurses who request nursing peer review under this
10 chapter;

11 (iii) nursing practice and patient care
12 concerns; and

13 (iv) the resolution of workplace and
14 practice questions relating to nursing and patient care.

15 SECTION 8. Section 303.005(a-1), Occupations Code, is
16 amended to read as follows:

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

22 SECTION 9. (a) Section 301.413(b-1), Occupations Code, as
23 added by this Act, and Sections 301.352, 301.402, 301.4025, and
24 301.413(b), Occupations Code, as amended by this Act, apply only to
25 a violation that occurs on or after the effective date of this Act.
26 A violation that occurs before the effective date of this Act is
27 covered by the law in effect on the date the violation occurred, and

1 the former law is continued in effect for that purpose.

2 (b) Section 301.412, Occupations Code, as amended by this
3 Act, applies only to a report made on or after the effective date of
4 this Act. A report made before the effective date of this Act is
5 covered by the law in effect on the date the report was made, and the
6 former law is continued in effect for that purpose.

7 (c) Section 301.413(g), Occupations Code, as added by this
8 Act, and Sections 301.413(a), (c), and (e), Occupations Code, as
9 amended by this Act, apply only to an action commenced on or after
10 the effective date of this Act. An action commenced before the
11 effective date of this Act is covered by the law in effect on the
12 date the action was commenced, and the former law is continued in
13 effect for that purpose.

14 SECTION 10. This Act takes effect September 1, 2011.