

By: Nelson

S.B. No. 192

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. Subsection (a), Section 301.352, 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 [~~7~~
25 ~~or reasonably believed to be required or authorized,~~] under this
26 subchapter, or a person who advises a nurse of the nurse's right or
27 obligation to report under this subchapter:

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 Subsection
8 (b-1) 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 committee 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 committee 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 committee
21 determination 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 committee
11 determination under Section 303.005, has a cause of action against
12 a person who 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 SECTION 7. Subdivision (5), Section 303.001, Occupations
23 Code, is amended to read as follows:

24 (5) "Peer review" means the evaluation of nursing
25 services, the qualifications of a nurse, the quality of patient
26 care rendered by a nurse, the merits of a complaint concerning a
27 nurse or nursing care, and a determination or recommendation

1 regarding a complaint. The term includes:

2 (A) the evaluation of the accuracy of a nursing
3 assessment and observation and the appropriateness and quality of
4 the care rendered by a nurse;

5 (B) a report made to a nursing peer review
6 committee concerning an activity under the committee's review
7 authority;

8 (C) a report made by a nursing peer review
9 committee to another committee or to the board as permitted or
10 required by law; ~~and~~

11 (D) implementation of a duty of a nursing peer
12 review committee by a member, an agent, or an employee of the
13 committee; and

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

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

19 (ii) the rights and obligations of and
20 protections for nurses who request nursing peer review under this
21 chapter;

22 (iii) nursing practice and patient care
23 concerns; and

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

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

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

6 SECTION 9. (a) Subsection (b-1), Section 301.413,
7 Occupations Code, as added by this Act, and Sections 301.352,
8 301.402, and 301.4025 and Subsection (b), Section 301.413,
9 Occupations Code, as amended by this Act, apply only to a violation
10 that occurs on or after the effective date of this Act. A violation
11 that occurs before the effective date of this Act is covered by the
12 law in effect on the date the violation occurred, and the former law
13 is continued in effect for that purpose.

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

19 (c) Subsections (a), (c), and (e), Section 301.413,
20 Occupations Code, as amended by this Act, apply only to an action
21 commenced on or after the effective date of this Act. An action
22 commenced before the effective date of this Act is covered by the
23 law in effect on the date the action was commenced, and the former
24 law is continued in effect for that purpose.

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