

BILL ANALYSIS

C.S.H.B. 581
By: Howard
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, a nurse who is retaliated or discriminated against for engaging in certain patient advocacy activities such as reporting patient care concerns, refusing to engage in certain conduct, or requesting a nursing peer review, has the right to file a lawsuit for the harm suffered, such as lost income. There is concern, however, that current law does not include a clear waiver of sovereign immunity for nurses working in public hospitals.

Interested parties assert that even though state whistleblower laws apply to all public employees, a nurse working at a public hospital is protected by those laws only if the nurse reports a violation to a proper external authority, not if the nurse raises a patient care concern internally or if the nurse requests safe harbor nursing peer review. The parties contend that, as a result, a publicly employed nurse is not afforded the same patient advocacy protections as a nurse working in a private hospital and is not able to seek legal relief for retaliation for engaging in patient advocacy activities that a licensed nurse is required to perform. The parties further note that current law actually encourages a publicly employed nurse to initially report concerns externally, even though it is generally beneficial for all concerned for a nurse to report patient care concerns internally first in order to have such concerns evaluated and addressed as promptly as possible.

C.S.H.B. 581 seeks to authorize a publicly employed nurse to sue the state or a local governmental entity to recover limited damages for certain retaliatory actions taken against the nurse for fulfilling obligations as a licensed nurse practicing under Texas 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

C.S.H.B. 581 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 statutory provisions prohibiting retaliatory actions against certain persons to sue the state or local governmental entity for relief. The bill specifies that the sovereign immunity of the state or local governmental entity from suit and from liability is waived for the limited purpose of allowing the nurse to maintain a lawsuit in state court to obtain such relief. The bill specifies that relief under the bill's provisions is in addition to any other remedies a nurse may have under state or federal law as a public employee.

C.S.H.B. 581 applies Government Code provisions relating to the type of relief and the amount of damages available to a public employee, the time during which a public employee is required to seek relief, and the requirement that a public employee use the grievance or appeal procedures of the employing state or local governmental entity before suing for relief to a lawsuit under the bill's provisions. The bill requires such a lawsuit against a state governmental entity to be

brought in a district court in Travis County or a county in which all or part of the acts or omissions giving rise to the cause of action occurred and requires such a lawsuit against a local governmental entity to be brought in a district court in a county in which all or part of the entity is located.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 581 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 301.413, Occupations Code, is amended by adding Subsection (g) to read as follows:

(g) A nurse employed by a hospital operated by or on behalf of a state or local governmental entity who alleges a violation of Subsection (b) may sue the state or local governmental entity for relief under this section, and the sovereign immunity of the state or local governmental entity from suit and from liability is waived for the limited purpose of allowing the nurse to maintain a lawsuit in state court to obtain that relief.

The provisions of Section 554.003, Government Code, relating to the type of relief and the amount of damages available to a public employee apply to a lawsuit under this subsection. Relief under this section is in addition to any other remedies a nurse may have under state or federal law as a public employee. In this subsection:

(1) "Local governmental entity," "public employee," and "state governmental entity" have the meanings assigned by Section 554.001, Government Code.

(2) "Hospital" has the meaning assigned by Section 241.003, Health and Safety Code, and includes a mental hospital licensed under Chapter 577, Health and Safety Code.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 301.413, Occupations Code, is amended by adding Subsections (g), (h), (i), and (j) to read as follows:

(g) A nurse employed by a hospital operated by or on behalf of a state or local governmental entity who alleges a violation of Subsection (b) may sue the state or local governmental entity for relief under this section, and the sovereign immunity of the state or local governmental entity from suit and from liability is waived for the limited purpose of allowing the nurse to maintain a lawsuit in state court to obtain that relief.

(See Subsection (h)(1) below.)

Relief under this section is in addition to any other remedies a nurse may have under state or federal law as a public employee. In this subsection:

(1) "Local governmental entity," "public employee," and "state governmental entity" have the meanings assigned by Section 554.001, Government Code.

(2) "Hospital" has the meaning assigned by Section 241.003, Health and Safety Code, and includes a mental hospital licensed under Chapter 577, Health and Safety Code.

(h) The following provisions of Chapter 554, Government Code, apply to a lawsuit under Subsection (g):

(1) the type of relief and the amount of damages available to a public employee under Section 554.003;

(2) the time during which a public employee must seek relief under Section

554.005; and

(3) the requirement that a public employee use the grievance or appeal procedures of the state or local governmental entity before suing for relief under Section 554.006.

(i) A lawsuit under Subsection (g) against a state governmental entity shall be brought in a district court in Travis County or a county in which all or part of the acts or omissions giving rise to the cause of action occurred.

(j) A lawsuit under Subsection (g) against a local governmental entity shall be brought in a district court in a county in which all or part of the entity is located.

SECTION 2. The change in law made by this Act to Section 301.413, Occupations Code, applies to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 2. Same as introduced version.

SECTION 3. This Act takes effect September 1, 2013.

SECTION 3. Same as introduced version.