

SENATE AMENDMENTS

2nd Printing

By: Howard, King of Taylor, King of Hemphill,
Naishtat

H.B. No. 581

A BILL TO BE ENTITLED

AN ACT

relating to the waiver of sovereign immunity in certain employment lawsuits by nurses and in certain employment discrimination actions in connection with a workers' compensation claim.

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

SECTION 1. Chapter 451, Labor Code, is amended by adding Section 451.0025 to read as follows:

Sec. 451.0025. WAIVER OF IMMUNITY; PERMISSION FOR FIRST RESPONDER TO SUE. (a) In this section, "first responder" has the meaning assigned by Section 421.095, Government Code.

(b) A first responder who alleges a violation of Section 451.001 by a state or local governmental entity that employs the first responder may sue the governmental entity for the relief provided by this chapter. Sovereign or governmental immunity from suit is waived and abolished to the extent of liability created by this chapter.

(c) To the extent a person has official or individual immunity from a claim for damages, this section does not affect that immunity.

SECTION 2. Section 504.002, Labor Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The following provisions of Subtitles A and B apply to and are included in this chapter except to the extent that they are

1 inconsistent with this chapter:

2 (1) Chapter 401, other than Section 401.011(18)
3 defining "employer" and Section 401.012 defining "employee";

4 (2) Chapter 402;

5 (3) Chapter 403, other than Sections 403.001-403.005;

6 (4) Chapters 404 and 405;

7 (5) Sections 406.006-406.009 and Subchapters B and
8 D-G, Chapter 406, other than Sections 406.033, 406.034, 406.035,
9 406.091, and 406.096;

10 (6) Chapter 408, other than Sections 408.001(b) and
11 (c);

12 (7) Chapters 409-412;

13 (8) Chapter 413, except as provided by Section
14 504.053;

15 (9) Chapters 414-417; and

16 (10) Chapter 451, subject to the limitations of
17 Subsection (a-1).

18 (a-1) The liability of a political subdivision under
19 Chapter 451 is limited to money damages in a maximum amount of
20 \$100,000 for each person aggrieved by a violation of that chapter.

21 SECTION 3. Section 301.413, Occupations Code, is amended by
22 adding Subsections (g), (h), (i), and (j) to read as follows:

23 (g) A nurse employed by a hospital operated by or on behalf
24 of a state or local governmental entity who alleges a violation of
25 Subsection (b) may sue the state or local governmental entity for
26 relief under this section, and the sovereign immunity of the state
27 or local governmental entity from suit and from liability is waived

1 for the limited purpose of allowing the nurse to maintain a lawsuit
2 in state court to obtain that relief. Relief under this section is
3 in addition to any other remedies a nurse may have under state or
4 federal law as a public employee. In this subsection:

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

8 (2) "Hospital" has the meaning assigned by Section
9 241.003, Health and Safety Code, and includes a mental hospital
10 licensed under Chapter 577, Health and Safety Code.

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

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

15 (2) the time during which a public employee must seek
16 relief under Section 554.005; and

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

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

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

27 SECTION 4. Section 451.0025, Labor Code, as added by this

1 Act, and Section 504.002, Labor Code, as amended by this Act, apply
2 only to a cause of action that accrues on or after the effective
3 date of this Act. A cause of action that accrues before the
4 effective date of this Act is governed by the law in effect on the
5 date the cause of action accrued, and the former law is continued in
6 effect for that purpose.

7 SECTION 5. The change in law made by this Act to Section
8 301.413, Occupations Code, applies to an action commenced on or
9 after the effective date of this Act. An action commenced before
10 the effective date of this Act is governed by the law as it existed
11 immediately before the effective date of this Act, and that law is
12 continued in effect for that purpose.

13 SECTION 6. This Act takes effect September 1, 2013.

ADOPTED

MAY 20 2013

Antony Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. _____

BY: *Jddie Lucio Jr.*

1 Amend H.B. 581 (senate committee printing) as follows:

2 (1) In the recital to SECTION 3 of the bill (page 2, line 2),
3 strike "and (j)" and substitute "(j), (k), and (l)".

4 (2) In SECTION 3 of the bill, in proposed Section
5 301.413(g), Occupations Code (page 2, line 3), strike "A" and
6 substitute "Subject to Subsection (h), a".

7 (3) In SECTION 3 of the bill, in amended Section 301.413,
8 Occupations Code (page 2, between lines 17 and 18), insert the
9 following new Subsections (h) and (i) and reletter the subsequent
10 subsections of that section accordingly:

11 (h) Relief may be granted in a lawsuit brought under
12 Subsection (g) for an alleged violation of Subsection (b)(1) based
13 on a report made by a nurse under Section 301.4025(b) only if the
14 nurse:

15 (1) made the report:

16 (A) in writing, which may be provided
17 electronically; or

18 (B) verbally, if authorized by the nurse's
19 employer or another entity at which the nurse is authorized to
20 practice;

21 (2) made the report to:

22 (A) the nurse's supervisor;

23 (B) a committee authorized under state or federal
24 law to receive reports under Section 301.4025(b); or

25 (C) an individual or committee authorized by the
26 nurse's employer or another entity at which the nurse is authorized
27 to practice; and

28 (3) made the report not later than:

29 (A) the fifth day after the date the nurse became

1 aware of the situation if the situation involves a single incident;
2 or

3 (B) the fifth day after the date the nurse became
4 aware of the most recent occurrence of the situation if the
5 situation involves multiple incidents or a pattern of behavior.

6 (i) For purposes of Subsection (h), "supervisor" means an
7 individual who has authority over the responsibilities of the nurse
8 making the report or an individual who is in the nurse's chain of
9 command.

10 (4) Strike SECTION 1 of the bill, adding Section 451.0025,
11 Labor Code (page 1, lines 23 through 36).

12 (5) Strike SECTION 2 of the bill, amending Section 504.002,
13 Labor Code (page 1, lines 37 through 61).

14 (6) Strike SECTION 4 of the bill (page 2, lines 34 through
15 40).

16 (7) Renumber the SECTIONS of the bill appropriately.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 22, 2013

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB581 by Howard (Relating to the waiver of sovereign immunity in certain employment lawsuits by nurses and in certain employment discrimination actions in connection with a workers' compensation claim.), **As Passed 2nd House**

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| No significant fiscal implication to the State is anticipated. |
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The bill would amend the Occupations Code, Chapter 301 to waive sovereign immunity in lawsuits where a nurse employed by a state or local government operated hospital alleges unlawful retaliation. To qualify for relief from a lawsuit regarding retaliation for reporting the alleged violation, the nurse would have to meet certain standards in reporting, such as making a violation reporting to a supervisor or another authorized person. The bill would require that a nurse employed by a state agency or local government seek relief within 90 days on an action and use the grievance procedure in place at his or her employer before filing a lawsuit. The bill would require that cases against state agencies be processed in Travis County, and that cases against local government be processed in the county where all or a part of that governmental entity is located.

The change in law made to the Occupations Code applies to an action commenced on or after the effective date of the bill. The bill takes effect September 1, 2013.

Multiple agencies including the Office of the Attorney General, Office of Court Administration, the Department of State Health Services, the Texas Board of Nursing, and the Texas Department of Criminal Justice anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources. For higher education, the Texas A&M University System and the University of Texas System anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Local Government Impact

To the extent that local governments owning or operating facilities that employ nurses are sued under the bill, there may be costs associated with this bill that would vary depending on the number of future cases.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 320 Texas Workforce Commission, 405 Department of Public Safety, 454 Department of Insurance, 479 State Office of Risk Management, 507 Texas Board of Nursing, 537 State Health Services, Department of, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, AG, JI, JJO, NV, ER, CL, AM, CH, DEH, KKR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

May 14, 2013

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB581 by Howard (Relating to the waiver of sovereign immunity in certain employment lawsuits by nurses and in certain employment discrimination actions in connection with a workers' compensation claim.), **As Engrossed**

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| <p>No significant fiscal implication to the State is anticipated.</p> |
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The bill would amend the Labor Code, Chapter 451, to permit a first responder employed by a state or local government entity to sue his or her employer based on discrimination relating to a workers' compensation claim filed by the employee. The bill would waive sovereign immunity for the state or local government entity employing a first responder under these circumstances. The bill would limit damages paid by a local government to \$100,000 for an applicable lawsuit.

The bill would amend the Occupations Code, Chapter 301 to waive sovereign immunity in lawsuits where a nurse employed by a state or local government operated hospital alleges unlawful retaliation. The bill would require that a nurse employed by a state agency or local government seek relief within 90 days on an action and use the grievance procedure in place at his or her employer before filing a lawsuit. The bill would require that cases against state agencies be processed in Travis County, and that cases against local government be processed in the county where all or a part of that governmental entity is located.

The change in law made to the Labor Code applies to a cause of action that accrues on or after the effective date of the bill. The change in law made to the Occupations Code applies to an action commenced on or after the effective date of the bill. The bill takes effect September 1, 2013.

Multiple agencies including the State Office of Risk Management, the Department of State Health Services, the Department of Public Safety, the Texas Workforce Commission, the Texas Department of Insurance and the Texas Board of Nursing indicate no fiscal impact. Other agencies including the Texas A&M University System, the University of Texas System, the Office of Court Administration, and the Texas Department of Criminal Justice anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources. The Office of the Attorney General estimates that there would be a cost associated with implementing provisions of the bill. It is anticipated that the costs could be absorbed within current agency resources.

Local Government Impact

The bill would waive sovereign immunity in lawsuits where a nurse employed by a state or local government operated hospital alleges unlawful retaliation. To the extent that local governments owning or operating facilities that employ nurses are sued under the bill, there may be costs that would vary depending on the number of future cases.

The bill would also waive sovereign immunity for local governments in suits involving first responders. The Texas Association of Counties reported that the fiscal impact of this provision could not be estimated. The City of Houston reported that the bill could mean fiscal losses to local governments that would vary depending on the number of future cases and may be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 320 Texas Workforce Commission, 405 Department of Public Safety, 454 Department of Insurance, 479 State Office of Risk Management, 507 Texas Board of Nursing, 537 State Health Services, Department of, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, AG, JI, JJO, NV, ER, CL, AM, CH, DEH, KKR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

April 19, 2013

TO: Honorable Tryon D. Lewis, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB581 by Howard (Relating to a limited waiver of sovereign immunity for state and local governmental entities in certain employment lawsuits filed by nurses.), **Committee Report 1st House, Substituted**

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| <p>No significant fiscal implication to the State is anticipated.</p> |
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The bill would amend the Occupations Code, Chapter 301 to waive sovereign immunity in lawsuits where a nurse employed by a state or local government operated hospital alleges unlawful retaliation. The bill would require that a nurse employed by a state agency or local government seek relief within 90 days on an action and use the grievance procedure in place at his or her employer before filing a lawsuit. The bill would require that cases against state agencies be processed in Travis County, and that cases against local government be processed in the county where all or a part of that governmental entity is located.

The change in law made to the Occupations Code applies to an action commenced on or after the effective date of the bill. The bill takes effect September 1, 2013.

Multiple agencies including the Office of the Attorney General, Office of Court Administration, the Department of State Health Services, the Texas Board of Nursing, and the Texas Department of Criminal Justice anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources. For higher education, the Texas A&M University System and the University of Texas System anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Local Government Impact

To the extent that local governments owning or operating facilities that employ nurses are sued under the bill, there may be costs associated with this bill that would vary depending on the number of future cases.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 507 Texas Board of Nursing, 537 State Health Services, Department of, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, CL, JI, JJO, AM, CH, DEH, KKR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION

March 24, 2013

TO: Honorable Tryon D. Lewis, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB581 by Howard (Relating to a limited waiver of sovereign immunity for state and local governmental entities in certain employment lawsuits filed by nurses.), **As Introduced**

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| <p>No significant fiscal implication to the State is anticipated.</p> |
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The bill would amend the Occupations Code, Section 301 to waive sovereign immunity in lawsuits where a nurse employed by state or local government operated hospital alleges unlawful retaliation.

Multiple agencies including the Office of the Attorney General (OAG), Office of Court Administration (OCA), the Department of State Health Services (DSHS), the Texas Board of Nursing (BON), and the Texas Department of Criminal Justice (TDCJ) anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources. For higher education, the Texas A&M University System (TAMU) and the University of Texas System (UT) anticipate any additional work resulting from the passage of the bill could be reasonably absorbed within current resources.

Local Government Impact

To the extent that local governments owning or operating facilities that employ nurses are sued under the bill, there may be costs associated with this bill that would vary depending on the number of future cases.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 507 Texas Board of Nursing, 537 State Health Services, Department of, 696 Department of Criminal Justice, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration

LBB Staff: UP, CL, JI, JJO, CH, DEH, KKR