

SUBJECT: Waiving sovereign immunity in some employment cases involving nurses

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Lewis, Farrar, Farney, Gooden, Hunter, K. King, Raymond, S. Thompson

0 nays

1 absent — Hernandez Luna

WITNESSES: For — Stacey Cropley, Texas Nurses Association; Elizabeth Sjoberg, Texas Hospital Association; (*Registered, but did not testify:* Dennis Borel, Coalition of Texans with Disabilities; Trish Conradt, Coalition for Nurses in Advanced Practice; Bryan Sperry, Children’s Hospital Association of Texas; James Willmann, Nursing Legislative Agenda Coalition)

Against — John Dahill, Texas Conference of Urban Counties; (*Registered, but did not testify:* Mark Mendez, Tarrant County; David Reagan, Texas Municipal League Intergovernmental Risk Pool; Paul Sugg, Texas Association of Counties)

BACKGROUND: Occupations Code, ch. 301, is the Nursing Practice Act. It prohibits a person from disciplining, discriminating against, or retaliating against a nurse who has engaged in certain patient advocacy activities, such as reporting patient care concerns.

Government Code, ch. 554, protects a public employee who in good faith reports a violation of law by a governmental entity or another public employee to an appropriate law enforcement authority (commonly known as whistleblower statutes), provides adjudication procedures, and establishes the types of relief available to a public employee.

DIGEST: CSHB 581 would waive the sovereign immunity from suit and liability of hospitals operated by state and local government entities if an employed nurse alleged a disciplinary, discriminatory, or retaliatory action after engaging in certain patient advocacy activities, such as reporting patient care concerns, requesting a nursing peer review, or refusing to engage in certain conduct. This would allow a nurse to maintain a lawsuit in state

court in order to seek relief, and any relief in these cases would be in addition to any other remedies available to a public employee under state or federal law.

The bill would adopt the following provisions from Texas' whistleblower statutes:

- the type of relief and amount of damages available to a public employee;
- the time during which a public employee could seek relief; and
- the requirement that a public employee use the grievance or appeal procedures of the state and local government entities before suing for relief.

The bill also would adopt several definitions from the Government Code and the Health and Safety Code.

A lawsuit against a state entity would have to be filed in Travis County District Court or a county in which all or part of relevant acts or omissions occurred. A lawsuit against a local entity would have to be brought in a district court in a county in which the relevant acts or omissions occurred.

This bill would take effect September 1, 2013, and would apply to actions commenced on or after that date.

**SUPPORTERS
SAY:**

CSHB 581 would protect nurses employed by a state or local government entity and afford them the same rights as nurses employed at a private hospital. All licensed nurses are required to report potentially unsafe conditions, but a publicly employed nurse has no legal recourse if retaliated against after engaging in certain patient advocacy actions, such as making an internal report or requesting a nursing peer review. Currently, publicly employed nurses must use whistleblower statutes to report violations of the law to an external law enforcement agency in order for sovereign immunity to be waived, which allows the employer — a state or local government entity — to be sued for retaliation.

The bill would allow a publicly employed nurse to sue the state or local government entity for retaliatory actions following internal reports in order to recover limited damages, such as lost wages. This protection would encourage nurses to report potentially unsafe conditions, enhancing public safety and patient care, while incentivizing hospitals to efficiently and

effectively resolve any internal reports or disputes.

The bill would waive sovereign immunity in very limited situations because a nurse would need solid evidence of an alleged retaliatory action in order to support a lawsuit. This evidentiary burden would protect against excessive and frivolous lawsuits.

**OPPONENTS
SAY:**

CSHB 581 would waive sovereign immunity in too many situations. A licensed nurse is required to engage in certain patient advocacy actions, but these actions are often based on subjective assessments and are not clear violations of the law. A state or local hospital might take a number of different steps to rectify the situation, some which could be interpreted as retaliatory actions. This bill would allow sovereign immunity to be waived if a nurse decided to file a lawsuit against his or her public employer based on subjective assessments of a situation.

Sovereign immunity should be waived only for clear violations of the law because it provides important protections for government entities and the taxpayers they represent. Minor adjustments in sovereign immunity protections could have significant public fiscal consequences. Excessive and abundant suits against a governmental entity could impair the body's ability to function and carry out its obligations to provide services to citizens. Any legislation that would entail an erosion of a public entity's sovereign immunity should be authorized only if absolutely necessary. It is important to protect public employers from facing excessive litigation.