

BILL ANALYSIS

Senate Research Center

H.B. 581
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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.

H.B. 581 amends current law 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.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 451, Labor Code, by adding Section 451.0025, as follows:

Sec. 451.0025. WAIVER OF IMMUNITY; PERMISSION FOR FIRST RESPONDER TO SUE. (a) Defines, in this section, "first responder."

(b) Authorizes a first responder who alleges a violation of Section 451.001 (Discrimination Against Employees Prohibited) by a state or local governmental entity that employs the first responder to sue the governmental entity for the relief provided by this chapter. Provides that sovereign or governmental immunity from suit is waived and abolished to the extent of liability created by this chapter.

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

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

(a) Provides that the following provisions of Subtitles A (Workers' Compensation Act) and B (Discrimination Issues) apply to and are included in this chapter except to the extent that they are inconsistent with this chapter:

(1)-(9) Makes no change to these subdivisions; and

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

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

SECTION 3. Amends Section 301.413, Occupations Code, by adding Subsections (g), (h), (i), and (j), as follows:

(g) Authorizes 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) (relating to prohibiting a person from taking action against someone who reports a violation or patient care concerns, refuses to engage in certain conduct, advises a nurse of their rights, or requests a peer review determination) to sue the state or local governmental entity for relief under this section, and provides 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 that relief. Provides that relief under this section is in addition to any other remedies a nurse may have under state or federal law as a public employee. Defines, in this subsection "local governmental entity," "public employee," "state governmental entity," and "hospital."

(h) Provides that the following provisions of Chapter 554 (Protection for Reporting Violations of Law), 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 (Relief Available to Public Employee);

(2) the time during which a public employee must seek relief under Section 554.005 (Limitation Period); 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 (Use of Grievance or Appeal Procedures).

(i) Requires that a lawsuit under Subsection (g) against a state governmental entity 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) Requires that a lawsuit under Subsection (g) against a local governmental entity be brought in a district court in a county in which all or part of the entity is located.

SECTION 4. Provides that Section 451.0025, Labor Code, as added by this Act, and Section 504.002, Labor Code, as amended by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. Provides that a cause of action that accrues before the effective date of this Act is governed by the law in effect on the date the cause of action accrued, and the former law is continued in effect for that purpose.

SECTION 5. Provides that 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. Provides that 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 6. Effective date: September 1, 2013.