

**SUBJECT:** Education and regulation of social workers

**COMMITTEE:** Human Services — favorable, without amendment

**VOTE:** 8 ayes — Naishtat, Maxey, Chavez, Christian, J. Davis, Noriega, Truitt, Wohlgemuth

0 nays

1 absent — Telford

**SENATE VOTE:** On final passage, April 27 — voice vote

**WITNESSES:** (*On House companion bill, HB 2291:*)  
For — Vicki Hansen and Leslie Hernandez, National Association of Social Workers

Against — None

**BACKGROUND:** The Board of Social Work Examiners licenses and regulates about 18,000 master social workers, social workers, and social work associates under the Texas Professional Social Work Act (Human Resources Code, chapter 50). The board is authorized to reprimand a license holder or to suspend or revoke a license. It also may take action to enjoin a violation of the act or refer the case to the attorney general for civil penalties.

The board is administratively attached to the Texas Department of Health.

**DIGEST:** SB 1678 would require an applicant for a license as a social work associate to have a baccalaureate degree in behavioral or social sciences or a related field. It would require people seeking renewal of licenses or certificates that have been expired for more than a year to take an examination. The bill also would amend provisions of the Professional Social Work Act regarding reporting violations, retaliation, and administrative penalties.

**Reporting violations.** A licensed social worker or social work associate could report in a written, signed report to the appropriate licensing board, agency, or facility an incident believed to have exposed a client to a substantial risk of

harm. The reporting person would be immune from civil liability and could not be subjected by the person's employer to retaliatory action as a result of making the report.

**Causes of action for retaliation.** A person could not suspend or terminate the employment of or otherwise discipline or discriminate against a person who reported a violation without malice.

A license holder named as a defendant in a civil action or subjected by his or her employer to other retaliatory action as a result of reporting a violation could file a counterclaim in the pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages, if the retaliatory action was found to be frivolous, unreasonable, or taken in bad faith.

A license holder could recover the greater of actual damages or \$1,000, exemplary damages, court costs, and reasonable attorney's fees. The license holder also would be entitled to reinstatement or severance pay and to compensation for lost wages.

A person who brought an action under this provision would have the burden of proof. It would be a rebuttable presumption that the license holder's employment was suspended or terminated for reporting a violation if the license holder was suspended or terminated within 60 days of the report.

**Administrative penalties.** The Board of Social Work Examiners could assess an administrative penalty on a license holder who violated a law or rule. The penalty could range from \$50 to \$500 for each violation, and each day a violation continued would constitute a separate violation.

Penalty amounts would be based on the seriousness of the violation, the history of previous violations, and other specified considerations. If the executive director found that a violation had occurred, the executive director would have to issue a report stating the facts upon which the determination was based and the recommended penalty.

The executive director would have to give written notice to the person charged with the violation within 14 days after the date the report was issued.

The notice would have to include a summary of charges, the recommended penalty, and a statement that the person had a right to a hearing.

Within 10 days after the notice was sent, the person could give written acceptance of the determination or make a written request for a hearing.

**Hearings.** If a person requested a hearing or failed to respond to the notice, the executive director would have to set a hearing and give written notice to the license holder. Hearings would have to be held before an administrative law judge of the State Office of Administrative Hearings, who would issue to the board a proposed decision and the amount of the proposed penalty. The board then could find the violation to have occurred or not to have occurred, based on the findings and conclusions of the administrative law judge.

**Penalty payment.** A person charged with a penalty would have to pay the full amount or file a petition for a judicial review within 30 days. In cases of judicial review, the enforcement of a penalty could be stayed by placing the penalty amount in an escrow account, giving the court a supersedeas bond, or requesting the court to stay enforcement of the penalty.

This bill would take effect September 1, 1999, and would apply only to actions, license applications, reports, and violations occurring on or after that date.

**SUPPORTERS  
SAY:**

SB 1678 is needed to give the Board of Social Work Examiners the appropriate tools to penalize social workers who violate laws and rules, and to protect social workers who report fraud, abuse, neglect, and other harmful or illegal actions to the appropriate authorities.

The bill also would raise the standards for social work licensure to guarantee competency and quality in meeting the current and future demands of social work services. When the licensing act was passed in 1993, many people working in the social services positions were not professionally trained. The qualifications for social work associates at that time, that they have at least a two-year degree and experience, was a provision to help practice settings maintain their staff. Now there are 29 baccalaureate social work programs in Texas, with many more on the way.

Students now in school who hope to be social work associates still could do so under board rules that could phase in the new qualification. Also, the number of affected students is probably small. Last year, only four people applied for a social work associate license who had only two years of college.

The examination requirement also would ensure the competency of social workers who renew their licenses after a lapse. When the social work law first was enacted, many people were grandfathered into the system without taking an examination. Under current law, social workers could let their licenses lapse for an indeterminate amount of time and then renew them without showing proof that they had kept up with their field or skills. Most social workers from other states who apply for a Texas license are happy to have the opportunity to “brush up” for a test.

The bill’s retaliation-related provisions mirror those now used for nurses, nursing home employees, and state employees. Social workers and nurses are the professionals most likely to encounter situations of abuse or fraud, because their direct caregiving services. Their professional codes of ethics require these professionals to protect and help needy individuals, and they should not be at risk of losing their jobs when carrying out their duties, especially when they see that laws are being broken and substantial harm is being done. The retaliation provisions protecting nurses have been in statute for 12 years and have been used only three times. One case, however, was appealed to the Texas Supreme Court, which upheld the Texas statute as being necessary to protect the public (*Clark vs. Texas Home Health Inc.*, 971 S.W.2d 435 (Tex. 1998)).

Administrative penalties are used commonly and widely in state regulation of professionals and facilities in Texas and in other states. SB 1678 would authorize the board to impose fair administrative penalties that conform with current civil penalty amounts and would authorize the board to impose a fine for each day of continuing violation.

The board’s current tools, reprimands or license suspensions or revocations, often are too lenient or too harsh a response to violations of social work practice. Referring cases to the attorney general for civil penalties often is ineffective because of the competing workload of other, often more serious, civil cases referred by other agencies.

The bill would protect a license holder's due-process rights, and the license holder would be subject to the same procedures as all other citizens and businesses under the Texas Administrative Procedures Act. License holders would have to receive written notice of the alleged violation. They could request and receive hearings before an impartial administrative law judge, and they could petition for a judicial review to contest the occurrence of the violation, the amount of penalty, or both.

Handling suspected cases of violations through the criminal justice system would be costly and time-consuming for both the state and the license holder and would not accomplish one of the goals of administrative penalties — to foster the correction of a problem and create a safe environment.

**OPPONENTS  
SAY:**

The imposition of administrative penalties on professionals does not give alleged violators the same due-process rights they would have received in criminal proceedings, such as a court-ordered appointment of an attorney.

Also, there is no evidence that financial penalties or the threat thereof makes professionals comply with their practice laws better. If anything, the threat of license revocation is a more powerful deterrent than the threat of a fine.

Raising the standard from two years of college to four years could jeopardize the plans of some students who were counting on getting a social work license after two years of college.

**NOTES:**

The companion bill, HB 2291 by Naishtat, was reported favorably as substituted by the House Human Services Committee on March 30.