

SUBJECT: Reports by nurses of conduct and protection from retaliation

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Delisi, Laubenberg, Jackson, Cohen, Gonzales, S. King, Olivo, Truitt

0 nays

1 absent — Coleman

SENATE VOTE: On final passage, March 28 — 30-0, on Local and Uncontested Calendar

WITNESSES: For —Toni Inglis, Texas Nurses Association; Elizabeth Sjoberg, Texas Hospital Association; James Willmann, Texas Nurses Association;
(Registered, but did not testify: Ed Berger, SETON Family of Hospitals; Gretchen Birdwell, Nursing Legislative Agenda Coalition; Pamela J. Bolton, Texas Watch; Cindy Gunn, Memorial Hermann Healthcare System; Michele O'Brien, CHRISTUS Santa Rosa Healthcare; Denise Rose, Texas Childrens Hospital; Lynda Woolbert, Coalition for Nurses in Advanced Practice; Chris Yanas, University Health System)

Against —Elizabeth Higginbotham, Danielle Magaña, Joanne Thompson, National Nurses Organizing Committee *(Registered, but did not testify:* Emelda Balderas, Rosanne Jimenez, Diana Purzada, Joseph Schuman, Carol Wetterauer, National Nurses Organizing Committee)

BACKGROUND: The Nurse Practice Act governs the practice of nursing. It covers provisions for licensure, education, discipline, and reporting. The Nurse Practice Act and the Nursing Safe Harbor Peer Law provide safe harbor protection for nurses who have a good faith reason to believe that a health care practitioner, agency, or facility has engaged in conduct that might jeopardize patient care or safety if the nurse reports this conduct to the nurse's employer, another entity at which the nurse is authorized to practice, the Department of State Health Services (DSHS) , or the Board of Nurse Examiners (BNE).

A person or entity may not terminate, suspend, or discriminate against a nurse who reports practice concerns without malice. A nurse may request a nursing peer review to determine whether or not the action imperiled patient safety. During the time that the peer review committee, the entity's patient safety committee, DSHS, or BNE reviews the nurse's concern, the nurse may claim safe harbor, meaning that employment actions against the nurse cannot be initiated because they would be presumed to be retaliatory. A nurse who has been subjected to an adverse employment action as a result of reporting conduct may have a cause of action. The nurse could recover actual damages or \$1,000, exemplary damages, court costs, and reasonable attorney's fees.

DIGEST: SB 761 would amend the Nurse Practice Act to consolidate, reorganize, and add cross-references to various provisions governing safe harbor provisions, which protect nurses who report actions or conduct of a health care practitioner, agency, or facility to an employer or the Board of Nurse Examiners because the nurse has reason to believe the actions or conduct could imperil patient care and safety.

The bill would require persons or entities that employ nurses to adopt and implement policies to inform nurses of the right to request a nursing peer review committee determination and the procedure for making a request.

The bill also would increase from \$1,000 to \$5,000 the minimum recovery for a nurse who was retaliated against because the nurse had reported without malice under the subchapter, had in good faith requested a nursing peer review determination, or had refused to engage in an act or omission with respect to patient care that would constitute grounds for reporting the nurse.

SB 761 would establish that a nurse did not act in good faith in connection with a request made or an action taken if there was not a reasonable factual or legal basis for the request or action.

The bill would take effect September 1, 2007, and would apply only to conduct that occurred on or after that date.

SUPPORTERS SAY: SB 761 would clarify the Nursing Practice Act to restate in a clearer and more understandable way the patient advocacy and whistleblower protections provided to a nurse who raised patient care concerns or

advocated for patients and the remedies that would be available if the nurse were retaliated against because of that advocacy. The bill would help provide the best possible patient care because it is crucial that nurses be able to raise patient care concerns and advocate for their patients without fear of retaliation. Employment pressure, discrimination, and retaliatory action should not be used to undermine patient safety, which should be paramount. The law should provide this protection, and nurses should understand what the protections are.

The bill would help nurses better understand their rights and their ability to ensure appropriate quality patient care. It would consolidate provisions on safe harbor, reorganize current provisions into one section, add cross references, and clarify language to simplify the process for a nurse to make reports about patient care and safety. These protections have been enacted on an incremental, piecemeal basis over 20 years, resulting in a disjointed, unclear law that is difficult for nurses to read and understand. SB 761 would help alleviate the confusion, clarify the statute, and require that entities inform nurses of their ability to report and request nursing peer review committees.

**OPPONENTS
SAY:**

SB 761 would not go far enough. Current law does not provide strong protections for nurses who stand up to unsafe care for their patients. The current safe harbor provisions are onerous and require nurses to go through many steps to claim protection that still may not be guaranteed. Most nurses are unaware of safe harbor provisions. Many who report unsafe patient care have been told that they would be fired for reporting. Furthermore, some nurses who claim safe harbor protection have had to fight an uphill battle to educate supervisors and employers about the law before receiving protection under the provisions. SB 761 merely would reorganize these inadequate provisions and do little to strengthen the protections for nurses, to improve the education of nurses about safe harbor protections, to mandate the education components for employers, who sometimes mistakenly tell nurses they cannot claim protection, or to increase penalties against those who retaliate against nurses who report.