

BILL ANALYSIS

Senate Research Center
76R4534 SMH-D

S.B. 1678
By: Bernsen
Human Services
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As Filed

DIGEST

Currently, a whistle blower protective provision is lacking to protect licensed social workers who report violations. Violations of provisions of Chapter 50, Human Resources Code, pertaining to social work are subject to civil penalties not to exceed \$500. This bill would set forth guidelines for the regulation of social workers and social work associates, provide administrative penalties for violations of the Act, and create a whistle blower provision for licensed social workers.

PURPOSE

As proposed, S.B. 1678 sets forth the regulation of social workers and social work associates, and provides administrative penalties for violations of the Act.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 50.017, Human Resources Code, to require the Texas State Board of Social Worker Examiners (examiners board) to consider a baccalaureate degree in the behavioral or social sciences or in a related field as minimum evidence that an applicant is qualified to be examined for a license as a social work associate. Authorizes a licensed social work associate to engage in the practice of social work and perform social work services only under the supervision of a licensed social worker or master social worker. Deletes a provision regarding an associate of arts degree.

SECTION 2. Amends Chapter 50, Human Resources Code, by adding Sections 50.0225 - 50.0228, as follows:

Sec. 50.0225. SUBPOENA. Authorizes the examiners board to request and compel by subpoena the attendance of witnesses for examination under oath and the production for inspection of certain materials and evidence relevant to the investigation of an alleged violation of this chapter. Authorizes the examiners board, acting through the attorney general, to file suit to enforce the subpoena in a district court in a certain county, if a person fails to comply with a subpoena issued under this section.

Sec. 50.0226. REPORT OF VIOLATION. Authorizes a person licensed under this chapter to report in a written, signed report submitted to the appropriate licensing board, agency, or facility, an incident the person believes to have exposed a client to substantial risk of harm, including a failure to provide proper care, illegal billing practices, and falsification of records.

Sec. 50.0227. REPORTING IMMUNITY. Provides that a person who makes a report authorized under Section 50.0226, is immune for civil liability and is prohibited from being subjected to other retaliatory action as a result of making the report.

Sec. 50.0228. CAUSE OF ACTION FOR RETALIATION. Authorizes a person named as a defendant in a civil action or subjected to other retaliatory action as a result of filing a report to file a counterclaim in the pending action or prove a cause of action in a subsequent suit to recover defense costs and punitive damages, if the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith. Prohibits a person from terminating, disciplining, or discriminating against a person who makes a report without malice. Provides that a person who

makes a report under Section 50.0226 has a cause of action against a person who violates Subsection (b) and is authorized to recover certain damages and fees. Entitles a person whose employment is suspended or terminated in violation of this section to reinstatement or severance pay in an amount equal to three months of the employee's recent salary, and compensation for wages lost during the period of suspension or termination, in addition to the amount recovered under Subsection (c). Provides that a person who brings an action under this section has the burden of proof. Provides that it is a rebuttable presumption that a person's employment was suspended or terminated for making a report if the person was suspended or terminated within 60 days of making a report determined by the court to be authorized under Section 50.0226 and made without malice. Sets forth acceptable venues for an action under this section.

SECTION 3. Amends Section 50.023(e), Human Resources Code, to delete text regarding an examination originally required and a certificate.

SECTION 4. Amends Section 50.028, Human Resources Code, as follows:

Sec. 50.028. New heading: CIVIL PENALTY. Provides that a person who violates an order of the examiner's board is subject to a civil penalty.

SECTION 5. Amends the heading to Section 50.029, Human Resources Code, as follows:

Sec. 50.029. New heading: SUIT FOR CIVIL PENALTY OR INJUNCTIVE RELIEF.

SECTION 6. Amends Chapter 50, Human Resources Code, by adding Section 50.0295, as follows:

Sec. 50.0295. ADMINISTRATIVE PENALTY. Authorizes the examiner's board to impose an administrative penalty on a licensed person who violates this chapter or a rule or order adopted under this chapter. Prohibits the amount of the penalty from being less than \$50 and not to exceed \$500, and provides that each day a violation continues or occurs is a separate violation. Sets forth the basis for the penalty. Authorizes the enforcement of the penalty to be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. Authorizes a person who cannot afford to pay the penalty or file the bond to stay the enforcement by filing an affidavit, subject to contest by the examiner's board, in a certain manner required by the Texas Rules of Civil Procedure. Authorizes the attorney general to sue to collect the penalty. Provides that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

SECTION 7. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 8. Emergency clause.