

BILL ANALYSIS

Senate Research Center
76R8717 SMH-D

C.S.S.B. 1678
By: Bernsen
Human Services
4/14/1999
Committee Report (Substituted)

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, C.S.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. 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 by the person's employer 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 by the person's employer 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 compliance with certain procedures.

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 (person) 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 amount of the penalty. Authorizes the executive director of the Department of Protective and Regulatory Services (director) to issue a report stating the facts of the determination and recommendations on the imposition of a penalty. Requires the director to give written notice of the report to the person within 14 days after the date the report is issued. Sets forth requirements for the notice. Authorizes the person, in writing, to accept the determination and penalty of the director, or make a request for a hearing, within 10 days of receiving the notice. Requires the examiners board to approve, by order, the determination and penalty accepted by the person. Requires the director to set a hearing, required to be held by an administrative law judge of the State Office of Administrative Hearings (judge), and give written notice of the hearing to the person requesting the hearing or failing to respond to a notice of the report. Requires the judge to make findings of fact and conclusions of law and issue to the examiners board a proposal for a decision and penalty. Authorizes the examiners board to find that a violation did occur and impose a penalty, or find that a violation did not occur. Requires the notice of the examiners board to include a statement regarding the right to judicial review. Requires the person to pay the penalty or file a petition for judicial review within 30 days after the examiners board's order becomes final. Authorizes a person who files a petition for judicial review to stay enforcement of the penalty by taking certain actions, including paying the penalty or providing a supersedeas bond, or requesting the court to stay enforcement of the penalty by filing a certain affidavit and giving the affidavit to the director by certified mail. Authorizes the director to file with the court, within five days of receiving an affidavit under Subsection (n)(2), a contest to the affidavit. Requires the court to hold a hearing regarding the affidavit and stay enforcement of the penalty if facts of the affidavit are true. Provides that the person who files an affidavit has the burden of proof. Authorizes the penalty imposed to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty. Authorizes the court to alter the penalty the person is ordered to pay. Requires the court to order that the penalty is not owed if the finding of an occurrence of a violation is not sustained. Requires the court to order the appropriate amount plus interest accrued to be remitted if the penalty had been fully paid and the penalty amount is reduced or not upheld by the court. Provides that the interest accrues at the charge by the New York Federal Reserve Bank. Sets forth time period for which the interest is to be paid. Requires the court to order the release of supersedeas bond if given and the penalty is not upheld. Requires the court to order the release of the bond after the person pays the reduced amount if the penalty was reduced. 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.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 50.017, Human Resources Code, to delete a provision authorizing a licensed social work associate to practice social work.

SECTION 2.

Amends Section 50.0227, Human Resources Code, to provide that a person who makes a report authorized under Section 50.0226, is immune for civil liability and is prohibited from being subjected to by the person's employer other retaliatory action as a result of making the report.

Amends Section 50.0228, Human Resources Code, to make a conforming change.

SECTION 3.

Amends Section 50.023(e), Human Resources Code, to delete text regarding compliance with certain requirements.

SECTION 6.

Amends Section 50.0295, Human Resources Code, to set forth the basis for the amount of the penalty. Authorizes the director to issue a report stating the facts of the determination and recommendations on the imposition of a penalty. Requires the director to give written notice of the report to the person within 14 days after the date the report is issued. Sets forth requirements for the notice. Authorizes the person, in writing, to accept the determination and penalty of the director, or make a request for a hearing, within 10 days of receiving the notice. Requires the examiners board to approve, by order, the determination and penalty accepted by the person. Requires the director to set a hearing, required to be held by a judge and give written notice of the hearing to the person requesting the hearing or failing to respond to a notice of the report. Requires the judge to make findings of fact and conclusions of law and issue to the examiners board a proposal for a decision and penalty. Authorizes the examiners board to find that a violation did occur and impose a penalty, or find that a violation did not occur. Requires the notice of the examiners board to include a statement regarding the right to judicial review. Requires the person to pay the penalty or file a petition for judicial review within 30 days after the examiners board's order becomes final. Authorizes a person who files a petition for judicial review to stay enforcement of the penalty by taking certain actions, including paying the penalty or providing a supersedeas bond, or requesting the court to stay enforcement of the penalty by filing a certain affidavit and giving the affidavit to the director by certified mail. Authorizes the director to file with a court, within five days of receiving an affidavit under Subsection (n)(2), a contest to the affidavit. Requires the court to hold a hearing regarding the affidavit and stay enforcement of the penalty if facts of the affidavit are true. Provides that the person who files an affidavit has the burden of proof. Authorizes the penalty imposed to be collected if the person does not pay the penalty and the enforcement of the penalty is not stayed. Authorizes the attorney general to sue to collect the penalty. Authorizes the court to alter the penalty the person is ordered to pay. Requires the court to order that the penalty is not owed if the finding of an occurrence of a violation is not sustained. Requires the court to order the appropriate amount plus interest accrued to be remitted if the penalty had been fully paid and the penalty amount is reduced or not upheld by the court. Provides that the interest accrues at the rate charged by the New York Federal Reserve Bank. Sets forth the time period for which the interest is to be paid. Requires the court to order the release of the supersedeas bond, if given and the penalty is not upheld. Requires the court to order the release of the bond after the person pays the reduced amount if the penalty was reduced. Makes a nonsubstantive change.