

ASSEMBLY BILL NO. 183—ASSEMBLYMEN LESLIE, SMITH,
MCCLAIN, GIUNCHIGLIANI, PIERCE, ATKINSON,
GERHARDT, MANENDO, OCEGUERA AND PARKS

MARCH 9, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Prohibits employers and certain other persons from retaliating or discriminating unfairly against certain nurses and nursing assistants for refusing to provide nursing services under certain circumstances. (BDR 54-927)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to nursing; prohibiting employers and certain other persons from retaliating or discriminating unfairly against registered nurses, licensed practical nurses and nursing assistants for refusing to provide nursing services under certain circumstances; providing that nurses subjected to such retaliation or discrimination may recover certain damages; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a medical facility or its agent or employee from retaliating or discriminating unfairly against an employee who reports certain conduct of a physician to the Board of Medical Examiners or the State Board of Osteopathic Medicine or who cooperates or otherwise participates in an investigation conducted by such Boards. (NRS 449.205) An employee who believes he has been retaliated or discriminated against in such a case may file an action in court for appropriate relief. (NRS 449.207)

This bill prohibits an employer of a registered nurse, licensed practical nurse or nursing assistant, a person who retains a registered nurse, licensed practical nurse or nursing assistant as an independent contractor, or an agent or employee of the employer or person, from retaliating or discriminating against the nurse or nursing assistant if he refuses to provide services to a patient and the nurse or nursing assistant, in accordance with certain established policy, if any, reports to his immediate supervisor that the services may be harmful to the patient, unless the



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refusal constitutes unprofessional conduct. This bill further prohibits retaliation or unfair discrimination against a registered nurse, licensed practical nurse or nursing assistant who refuses to provide nursing services to a patient, if the nurse or nursing assistant, in accordance with certain established policy, if any, reports to his immediate supervisor that, as documented in his personnel file, he does not possess the knowledge, skill or experience to comply with an assignment to provide such nursing services, unless the refusal constitutes unprofessional conduct.

This bill authorizes any such nursing professional who believes that he has been retaliated or discriminated against to file an action in court for appropriate relief. If he prevails, this bill provides that the nursing professional may receive as damages payment for any hours that he was unable to work as a result of the retaliation or unfair discrimination and any other amount of damages deemed appropriate by the court.

This bill provides that if the nursing professional files such an action, the attorney for the nursing professional is required to file an affidavit with the court at the same time that the first pleading in the action is served. The affidavit is required to provide that the attorney reviewed the facts of the case, consulted with an expert he reasonably believes is knowledgeable in the matters involved in the action and that the attorney believes that the action has a reasonable basis in law and fact. This bill further provides that the affidavit may be filed at a later time if the attorney is unable to consult with an expert before filing the action because of the statute of limitations or another limitation provided by law.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 632 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. 1. *An employer of a licensee or nursing assistant or a person who retains a licensee or nursing assistant as an independent contractor, or any agent or employee of the employer or person, shall not retaliate or discriminate unfairly against:*

(a) The licensee or nursing assistant if the licensee or nursing assistant, in accordance with the policy, if any, established by the employer or person who retains the licensee or nursing assistant:

(1) Reports to his immediate supervisor, in writing, that, in his professional judgment, an assignment to provide nursing services to a patient would harm the patient; and

(2) Refuses to provide the nursing services to the patient, unless such refusal constitutes unprofessional conduct as set forth in this chapter or any regulations adopted pursuant thereto.

(b) The licensee or nursing assistant if the licensee or nursing assistant, in accordance with the policy, if any, established by the employer or person who retains the licensee or nursing assistant:

(1) Reports to his immediate supervisor, in writing, that he does not possess the knowledge, skill or experience to comply with an assignment to provide nursing services to a patient; and



(2) Refuses to provide to a patient nursing services for which, as verified by documentation in the personnel file of the licensee or nursing assistant concerning his competence to provide various nursing services, he does not possess the knowledge, skill or experience to comply with the assignment to provide nursing services to the patient, unless such refusal constitutes unprofessional conduct as set forth in this chapter or any regulations adopted pursuant thereto.

2. An employer of a licensee or nursing assistant or a person who retains a licensee or nursing assistant as an independent contractor, or any agent or employee of the employer or person, shall not retaliate or discriminate unfairly against the licensee or nursing assistant because the licensee or nursing assistant has taken an action described in subsection 1.

3. An employer of a licensee or nursing assistant or a person who retains a licensee or nursing assistant as an independent contractor, or any agent or employee of the employer or person, shall not prohibit, restrict or attempt to prohibit or restrict by contract, policy, procedure or any other manner the right of the licensee or nursing assistant to take an action described in subsection 1.

4. As used in this section, "retaliate or discriminate":

(a) Includes, without limitation, the following action if such action is taken solely because the licensee or nursing assistant took an action described in subsection 1:

(1) Frequent or undesirable changes in the location where the licensee or nursing assistant works;

(2) Frequent or undesirable transfers or reassignments;

(3) The issuance of letters of reprimand, letters of admonition or evaluations of poor performance;

(4) A demotion;

(5) A reduction in pay;

(6) The denial of a promotion;

(7) A suspension;

(8) A dismissal;

(9) A transfer; or

(10) Frequent changes in working hours or workdays.

(b) Does not include action described in subparagraphs (1) to (10), inclusive, of paragraph (a) if the action is taken in the normal course of employment or as a form of discipline.

Sec. 3. 1. A licensee or nursing assistant who believes that he has been retaliated or discriminated against in violation of subsection 2 or 3 of section 2 of this act may file an action in a



1 court of competent jurisdiction for such relief as may be
2 appropriate under the law.

3 2. If the licensee or nursing assistant prevails in such an
4 action, he may be awarded as damages:

5 (a) Payment for any hours which he was unable to work as a
6 result of the retaliation or discrimination, based on his current
7 hourly rate of pay; and

8 (b) Any other amount deemed appropriate by the court.

9 Sec. 4. 1. Except as otherwise provided in subsection 2, in
10 an action that is commenced against a person for violating the
11 provisions of subsection 2 or 3 of section 2 of this act, the attorney
12 for the complainant shall file an affidavit with the court
13 concurrently with the service of the first pleading in the action,
14 stating that the attorney:

15 (a) Has reviewed the facts of the case;

16 (b) Has consulted with an expert;

17 (c) Reasonably believes the expert who was consulted is
18 knowledgeable in the matters involved in the action; and

19 (d) Has concluded on the basis of his review and the
20 consultation with the expert that the action has a reasonable basis
21 in law and fact.

22 2. The attorney for the complainant may file the affidavit
23 required pursuant to subsection 1 at a later time if he could not
24 consult with an expert and prepare the affidavit before filing the
25 action without causing the action to be impaired or barred by the
26 statute of limitations or repose, or other limitations prescribed by
27 law. If the attorney must submit the affidavit late, he shall file an
28 affidavit concurrently with the service of the first pleading in the
29 action stating his reason for failing to comply with subsection 1
30 and the attorney shall consult with an expert and file the affidavit
31 required pursuant to subsection 1 not later than 45 days after
32 filing the action.

33 3. An expert consulted by an attorney to prepare an affidavit
34 pursuant to this section must not be a party to the action.

