

ASSEMBLY BILL NO. 10—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON HEALTH CARE)

PREFILED DECEMBER 2, 2008

Referred to Committee on Health and Human Services

SUMMARY—Prohibits retaliation or discrimination against registered nurses, licensed practical nurses and nursing assistants who report certain information relating to the safety of patients. (BDR 40-219)

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 health care; prohibiting certain retaliation or discrimination against registered nurses, licensed practical nurses and nursing assistants who report certain information, refuse to engage in certain conduct or participate in certain investigations or proceedings relating to the safety of patients; providing civil remedies and civil penalties for violations; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law prohibits a medical facility, physician or osteopathic physician from retaliating or discriminating against an employee who reports information concerning the conduct of a physician or osteopathic physician to the Board of Medical Examiners or the State Board of Osteopathic Medicine, reports a sentinel event to the Health Division of the Department of Health and Human Services or cooperates or participates in an investigation or proceeding conducted by the Board of Medical Examiners, the State Board of Osteopathic Medicine or another governmental entity concerning the conduct or sentinel event. Existing law also prohibits such retaliation or discrimination against a registered nurse, licensed practical nurse or nursing assistant who refuses to provide nursing services that he does not have the knowledge, skill or experience to provide. (NRS 449.205, 630.293, 633.505)

Sections 1, 3 and 5 of this bill provide additional protection against retaliation or discrimination for a registered nurse, licensed practical nurse or nursing assistant



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who: (1) reports certain information or concerns regarding the safety of patients; or (2) refuses to engage in conduct which would violate his duty to protect patients from actual or potential harm or which would subject him to disciplinary action by the State Board of Nursing.

Existing law provides that an employee of a medical facility, physician or osteopathic physician or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the medical facility, physician or osteopathic physician may file an action in court based on retaliation or discrimination. (NRS 449.207, 630.296, 633.507) **Sections 2, 4 and 6** of this bill expand these provisions by authorizing the court in such an action to award compensatory damages, reimbursement of lost wages and benefits, attorney's fees and punitive damages and to grant any equitable relief it considers appropriate. **Sections 2, 4 and 6** also provide that the Attorney General or any district attorney of this State may bring a civil action in the name of the State of Nevada to recover a civil penalty of not more than \$10,000 for each such act of retaliation or discrimination.

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

Section 1. NRS 449.205 is hereby amended to read as follows:
449.205 1. A medical facility or any agent or employee thereof shall not retaliate or discriminate unfairly against:

(a) An employee of the medical facility or a person acting on behalf of the employee who in good faith:

(1) Reports to the Board of Medical Examiners or the State Board of Osteopathic Medicine, as applicable, information relating to the conduct of a physician which may constitute grounds for initiating disciplinary action against the physician or which otherwise raises a reasonable question regarding the competence of the physician to practice medicine with reasonable skill and safety to patients;

(2) Reports a sentinel event to the Health Division pursuant to NRS 439.835; or

(3) Cooperates or otherwise participates in an investigation or proceeding conducted by the Board of Medical Examiners, the State Board of Osteopathic Medicine or another governmental entity relating to conduct described in subparagraph (1) or (2) ~~or~~ **or**

(b) A registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the medical facility and who ~~is~~ **is**:

(1) ~~In~~ **In** accordance with the policy, if any, established by the medical facility:

~~(1)~~ **(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)~~ (II) Refuses to provide to a patient nursing services for which, as verified by documentation in the personnel file of the registered nurse, licensed practical nurse 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]~~ the refusal constitutes unprofessional conduct as set forth in chapter 632 of NRS or any regulations adopted pursuant thereto ~~[H]~~;

(2) *Reports to the medical facility, the Board of Medical Examiners, the State Board of Osteopathic Medicine, the State Board of Nursing, the Legislature or any committee thereof or any other governmental entity:*

(I) *Any information concerning the willful conduct of another registered nurse, licensed practical nurse or nursing assistant which violates any provision of chapter 632 of NRS or which is required to be reported to the State Board of Nursing;*

(II) *Any concerns regarding patients who may be exposed to a substantial risk of harm as a result of the failure of the medical facility or any agent or employee thereof to comply with minimum professional or accreditation standards or applicable statutory or regulatory requirements; or*

(III) *Any other concerns regarding the medical facility, the agents and employees thereof or any situation that reasonably could result in harm to patients; or*

(3) *Refuses to engage in conduct that would violate the duty of the registered nurse, licensed practical nurse or nursing assistant to protect patients from actual or potential harm, including, without limitation, conduct which would violate any provision of chapter 632 of NRS or which would subject the registered nurse, licensed practical nurse or nursing assistant to disciplinary action by the State Board of Nursing.*

2. A medical facility or any agent or employee thereof shall not retaliate or discriminate unfairly against an employee of the medical facility or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the medical facility because the employee, registered nurse, licensed practical nurse or nursing assistant has taken an action described in subsection 1.

3. A medical facility or any agent or employee thereof shall not prohibit, restrict or attempt to prohibit or restrict by contract, policy, procedure or any other manner the right of an employee of the medical facility or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the medical facility to take an action described in subsection 1.



4. As used in this section:

(a) "Physician" means a person licensed to practice medicine pursuant to chapter 630 or 633 of NRS.

(b) "Retaliate or discriminate":

(1) Includes, without limitation, *any of* the following ~~action if such action is~~ *actions if* taken solely because the employee, ~~for the~~ registered nurse, licensed practical nurse or nursing assistant took an action described in subsection 1:

(I) Frequent or undesirable changes in the location where the ~~employee~~ *person* works;

(II) Frequent or undesirable transfers or reassignments;

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

(IV) A demotion;

(V) A reduction in pay;

(VI) The denial of a promotion;

(VII) A suspension;

(VIII) A dismissal;

(IX) A transfer; or

(X) Frequent changes in working hours or workdays.

(2) Does not include *an* action described in subparagraphs (I) to (X), inclusive, of subparagraph (1) if the action is taken in the normal course of employment or as a form of discipline.

Sec. 2. NRS 449.207 is hereby amended to read as follows:

449.207 *1.* An employee of a medical facility or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the medical facility *and* who believes that he has been retaliated or discriminated against in violation of NRS 449.205 may file an action in a court of competent jurisdiction . ~~for such relief as may be appropriate under the law.~~

2. If a court determines that a violation of NRS 449.205 has occurred, the court may award such damages as it determines to have resulted from the violation, including, without limitation:

(a) Compensatory damages;

(b) Reimbursement of any wages, salary, employment benefits or other compensation denied to or lost by the employee, registered nurse, licensed practical nurse or nursing assistant as a result of the violation;

(c) Attorney's fees and costs, including, without limitation, fees for expert witnesses; and

(d) Punitive damages, if the facts warrant.

3. The court shall award interest on the amount of damages at a rate determined pursuant to NRS 17.130.



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1 4. The court may grant any equitable relief it considers
2 appropriate, including, without limitation, reinstatement of the
3 employee, registered nurse, licensed practical nurse or nursing
4 assistant and any temporary, preliminary or permanent injunctive
5 relief.

6 5. If any action to retaliate or discriminate is taken against an
7 employee, registered nurse, licensed practical nurse or nursing
8 assistant within 60 days after the employee, registered nurse,
9 licensed practical nurse or nursing assistant takes any action
10 described in subsection 1 of NRS 449.205, there is a rebuttable
11 presumption that the action taken against the employee, registered
12 nurse, licensed practical nurse or nursing assistant constitutes
13 retaliation or discrimination in violation of NRS 449.205.

14 6. A medical facility or any agent or employee thereof that
15 violates the provisions of NRS 449.205 is subject to a civil penalty
16 of not more than \$10,000 for each violation. The Attorney General
17 or any district attorney of this State may recover the penalty in a
18 civil action brought in the name of the State of Nevada in any
19 court of competent jurisdiction.

20 7. Any action under this section must be brought not later
21 than 2 years after the date of the last event constituting the alleged
22 violation for which the action is brought.

23 8. As used in this section, "retaliate or discriminate" has the
24 meaning ascribed to it in NRS 449.205.

25 **Sec. 3.** NRS 630.293 is hereby amended to read as follows:

26 630.293 1. A physician or any agent or employee thereof
27 shall not retaliate or discriminate unfairly against ~~an~~:

28 (a) An employee of the physician or a person acting on behalf of
29 the employee who in good faith:

30 ~~(a)~~ (1) Reports to the Board of Medical Examiners
31 information relating to the conduct of the physician which may
32 constitute grounds for initiating disciplinary action against the
33 physician or which otherwise raises a reasonable question regarding
34 the competence of the physician to practice medicine with
35 reasonable skill and safety to patients;

36 ~~(b)~~ or

37 (2) Reports a sentinel event to the Health Division of the
38 Department of Health and Human Services pursuant to
39 NRS 439.835;

40 (b) A registered nurse, licensed practical nurse or nursing
41 assistant who is employed by or contracts to provide nursing
42 services for the physician and who:

43 (1) Reports to the physician, the Board of Medical
44 Examiners, the State Board of Nursing, the Legislature or any
45 committee thereof or any other governmental entity:



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(I) Any information concerning the willful conduct of another registered nurse, licensed practical nurse or nursing assistant which violates any provision of chapter 632 of NRS or which is required to be reported to the State Board of Nursing;

(II) Any concerns regarding patients who may be exposed to a substantial risk of harm as a result of the failure of the physician or any agent or employee thereof to comply with minimum professional or accreditation standards or applicable statutory or regulatory requirements; or

(III) Any other concerns regarding the physician, the agents and employees thereof or any situation that reasonably could result in harm to patients; or

(2) Refuses to engage in conduct that would violate the duty of the registered nurse, licensed practical nurse or nursing assistant to protect patients from actual or potential harm, including, without limitation, conduct which would violate any provision of chapter 632 of NRS or which would subject the registered nurse, licensed practical nurse or nursing assistant to disciplinary action by the State Board of Nursing; or

(c) ~~Cooperates~~ An employee of the physician, a person acting on behalf of the employee or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the physician and who cooperates or otherwise participates in an investigation or proceeding conducted by the Board of Medical Examiners or another governmental entity relating to conduct described in paragraph (a) or (b).

2. A physician or any agent or employee thereof shall not retaliate or discriminate unfairly against an employee of the physician *or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the physician* because the employee, *registered nurse, licensed practical nurse or nursing assistant* has taken an action described in subsection 1.

3. A physician or any agent or employee thereof shall not prohibit, restrict or attempt to prohibit or restrict by contract, policy, procedure or any other manner the right of an employee of the physician *or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the physician* to take an action described in subsection 1.

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

(a) Includes, without limitation, *any of* the following ~~action if~~ *actions if* taken solely because the employee, *registered nurse, licensed practical nurse or nursing assistant* took an action described in subsection 1:



- (1) Frequent or undesirable changes in the location where the ~~employee~~ *person* 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 *an* 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. 4. NRS 630.296 is hereby amended to read as follows:

630.296 *1. An employee of a physician or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the physician and who believes that he has been retaliated or discriminated against in violation of NRS 630.293 may file an action in a court of competent jurisdiction . ~~[for such relief as may be appropriate.]~~*

2. If a court determines that a violation of NRS 630.293 has occurred, the court may award such damages as it determines to have resulted from the violation, including, without limitation:

(a) Compensatory damages;

(b) Reimbursement of any wages, salary, employment benefits or other compensation denied to or lost by the employee, registered nurse, licensed practical nurse or nursing assistant as a result of the violation;

(c) Attorney's fees and costs, including, without limitation, fees for expert witnesses; and

(d) Punitive damages, if the facts warrant.

3. The court shall award interest on the amount of damages at a rate determined pursuant to NRS 17.130.

4. The court may grant any equitable relief it considers appropriate, including, without limitation, reinstatement of the employee, registered nurse, licensed practical nurse or nursing assistant and any temporary, preliminary or permanent injunctive relief.

5. If any action to retaliate or discriminate is taken against an employee, registered nurse, licensed practical nurse or nursing assistant within 60 days after the employee, registered nurse, licensed practical nurse or nursing assistant takes any action



1 *described in subsection 1 of NRS 630.293, there is a rebuttable*
2 *presumption that the action taken against the employee, registered*
3 *nurse, licensed practical nurse or nursing assistant constitutes*
4 *retaliation or discrimination in violation of NRS 630.293.*

5 6. *A physician or any agent or employee thereof that violates*
6 *the provisions of NRS 630.293 is subject to a civil penalty of not*
7 *more than \$10,000 for each violation. The Attorney General or*
8 *any district attorney of this State may recover the penalty in a civil*
9 *action brought in the name of the State of Nevada in any court of*
10 *competent jurisdiction.*

11 7. *Any action under this section must be brought not later*
12 *than 2 years after the date of the last event constituting the alleged*
13 *violation for which the action is brought.*

14 8. *As used in this section, "retaliate or discriminate" has the*
15 *meaning ascribed to it in NRS 630.293.*

16 **Sec. 5.** NRS 633.505 is hereby amended to read as follows:

17 633.505 1. An osteopathic physician or any agent or
18 employee thereof shall not retaliate or discriminate unfairly against
19 ~~an~~ :

20 (a) *An* employee of the osteopathic physician or a person acting
21 on behalf of the employee who in good faith:

22 ~~(a)~~ (1) Reports to the *State* Board *of Osteopathic Medicine*
23 information relating to the conduct of the osteopathic physician
24 which may constitute grounds for initiating disciplinary action
25 against the osteopathic physician or which otherwise raises a
26 reasonable question regarding the competence of the osteopathic
27 physician to practice medicine with reasonable skill and safety to
28 patients;

29 ~~(b)~~ *or*

30 (2) Reports a sentinel event to the Health Division *of the*
31 *Department of Health and Human Services* pursuant to
32 NRS 439.835;

33 (b) *A registered nurse, licensed practical nurse or nursing*
34 *assistant who is employed by or contracts to provide nursing*
35 *services for the osteopathic physician and who:*

36 (1) *Reports to the osteopathic physician, the State Board of*
37 *Osteopathic Medicine, the State Board of Nursing, the Legislature*
38 *or any committee thereof or any other governmental entity:*

39 (I) *Any information concerning the willful conduct of*
40 *another registered nurse, licensed practical nurse or nursing*
41 *assistant which violates any provision of chapter 632 of NRS or*
42 *which is required to be reported to the State Board of Nursing;*

43 (II) *Any concerns regarding patients who may be*
44 *exposed to a substantial risk of harm as a result of the failure of*
45 *the osteopathic physician or any agent or employee thereof to*



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1 *comply with minimum professional or accreditation standards or*
2 *applicable statutory or regulatory requirements; or*

3 (III) *Any other concerns regarding the osteopathic*
4 *physician, the agents and employees thereof or any situation that*
5 *reasonably could result in harm to patients; or*

6 (2) *Refuses to engage in conduct that would violate the duty*
7 *of the registered nurse, licensed practical nurse or nursing*
8 *assistant to protect patients from actual or potential harm,*
9 *including, without limitation, conduct which would violate any*
10 *provision of chapter 632 of NRS or which would subject the*
11 *registered nurse, licensed practical nurse or nursing assistant to*
12 *disciplinary action by the State Board of Nursing; or*

13 (c) ~~Cooperates~~ *An employee of the osteopathic physician, a*
14 *person acting on behalf of the employee or a registered nurse,*
15 *licensed practical nurse or nursing assistant who is employed by*
16 *or contracts to provide nursing services for the osteopathic*
17 *physician and who cooperates* or otherwise participates in an
18 investigation or proceeding conducted by the *State* Board of
19 *Osteopathic Medicine* or another governmental entity relating to
20 conduct described in paragraph (a) or (b).

21 2. An osteopathic physician or any agent or employee thereof
22 shall not retaliate or discriminate unfairly against an employee of
23 the osteopathic physician *or a registered nurse, licensed practical*
24 *nurse or nursing assistant who is employed by or contracts to*
25 *provide nursing services for the osteopathic physician* because the
26 employee, *registered nurse, licensed practical nurse or nursing*
27 *assistant* has taken an action described in subsection 1.

28 3. An osteopathic physician or any agent or employee thereof
29 shall not prohibit, restrict or attempt to prohibit or restrict by
30 contract, policy, procedure or any other manner the right of an
31 employee of the osteopathic physician *or a registered nurse,*
32 *licensed practical nurse or nursing assistant who is employed by*
33 *or contracts to provide nursing services for the osteopathic*
34 *physician* to take an action described in subsection 1.

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

36 (a) Includes, without limitation, *any of* the following ~~action if~~
37 ~~such action is~~ *actions if* taken solely because the employee,
38 *registered nurse, licensed practical nurse or nursing assistant* took
39 an action described in subsection 1:

40 (1) Frequent or undesirable changes in the location where the
41 ~~employee~~ *person* works;

42 (2) Frequent or undesirable transfers or reassignments;

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

45 (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 *an* 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. 6. NRS 633.507 is hereby amended to read as follows:

633.507 *1. An employee of an osteopathic physician or a registered nurse, licensed practical nurse or nursing assistant who is employed by or contracts to provide nursing services for the osteopathic physician and who believes that he has been retaliated or discriminated against in violation of NRS 633.505 may file an action in a court of competent jurisdiction . ~~[for such relief as may be appropriate under the law.]~~*

2. If a court determines that a violation of NRS 633.505 has occurred, the court may award such damages as it determines to have resulted from the violation, including, without limitation:

(a) Compensatory damages;

(b) Reimbursement of any wages, salary, employment benefits or other compensation denied to or lost by the employee, registered nurse, licensed practical nurse or nursing assistant as a result of the violation;

(c) Attorney's fees and costs, including, without limitation, fees for expert witnesses; and

(d) Punitive damages, if the facts warrant.

3. The court shall award interest on the amount of damages at a rate determined pursuant to NRS 17.130.

4. The court may grant any equitable relief it considers appropriate, including, without limitation, reinstatement of the employee, registered nurse, licensed practical nurse or nursing assistant and any temporary, preliminary or permanent injunctive relief.

5. If any action to retaliate or discriminate is taken against an employee, registered nurse, licensed practical nurse or nursing assistant within 60 days after the employee, registered nurse, licensed practical nurse or nursing assistant takes any action described in subsection 1 of NRS 633.505, there is a rebuttable presumption that the action taken against the employee, registered nurse, licensed practical nurse or nursing assistant constitutes retaliation or discrimination in violation of NRS 633.505.

6. An osteopathic physician or any agent or employee thereof that violates the provisions of NRS 633.505 is subject to a civil



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1 *penalty of not more than \$10,000 for each violation. The Attorney*
2 *General or any district attorney of this State may recover the*
3 *penalty in a civil action brought in the name of the State of*
4 *Nevada in any court of competent jurisdiction.*

5 *7. Any action under this section must be brought not later*
6 *than 2 years after the date of the last event constituting the alleged*
7 *violation for which the action is brought.*

8 *8. As used in this section, “retaliate or discriminate” has the*
9 *meaning ascribed to it in NRS 633.505.*

10 **Sec. 7.** This act becomes effective on July 1, 2009.

