

BILL ANALYSIS

Senate Research Center
77R6479 JAT-D

H.B. 482
By: Naishtat (Zaffirini)
Health & Human Services
4/27/2001
Engrossed

DIGEST AND PURPOSE

The 76th Legislature extended protection from retaliation for making complaints against a nursing home facility to contract employees and volunteers. The legislation also entitled volunteers or residents to sue for the greater of \$1,000 or actual damages, including mental anguish, and entitled employees whose employment is suspended or terminated to reinstatement of lost fringe benefits or seniority rights. The legislation did not specify that the protection extended to family members and guardians of residents in nursing homes, and it did not extend the same protection to contract employees, volunteers, and family members and guardians of residents in intermediate care facilities. H.B. 482 extends the protection from retaliation to family members and guardians of residents in nursing homes and the same entitlements to contract employees, volunteers, and family members and guardians of residents in intermediate care facilities.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 242.042(a), Health and Safety Code, to add language to require each institution to prominently and conspicuously post for display in a public area of the institution that is readily available to residents, employees, and visitors notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by Sections 242.133 and 242.1335.

SECTION 2. Amends Section 242.1335, Health and Safety Code, as follows:

Sec. 242.1335. New heading: RETALIATION AGAINST VOLUNTEERS, RESIDENTS, OR FAMILY MEMBERS OR GUARDIANS OF RESIDENTS. (a) Makes conforming changes.

(b) Makes conforming changes.

(c) Makes conforming changes.

SECTION 3. Amends Section 252.039, Health and Safety Code, to make a conforming change.

SECTION 4. Amends Sections 252.132(a), (b), and (d), Health and Safety Code, as follows:

(a) Defines "employee."

(b) Provides that an employee has cause of action against a facility, the owner of the facility, or another employee of the facility that suspends or terminates the employment of the employee or otherwise disciplines, discriminates against, or retaliates against the employee for certain

actions. Deletes language providing that a facility that violates Subsection (a) is liable to the person against whom the facility discriminated, and language authorizing a person against whom a facility discriminates in violation of Subsection (a) to sue for injunctive relief, damages, or both.

(d) Adds language entitling a person whose employment is suspended or terminated to appropriate injunctive relief, including, if applicable, reinstatement of lost fringe benefits or seniority rights.

SECTION 5. Amends Section 252.133, Health and Safety Code, as follows:

Sec. 252.133. New heading: **SUIT FOR RETALIATION AGAINST VOLUNTEER, RESIDENT, OR FAMILY MEMBER OR GUARDIAN OF RESIDENT.** Adds language to provide that a facility is prohibited from retaliating or discriminating against certain persons that make a complaint or file a grievance concerning the facility, report a violation of law, including a violation of this chapter or a rule adopted under this chapter, or initiate or cooperate in an investigation or proceeding of a governmental agency relating to the care, services, or conditions at the facility. Adds language to entitle certain persons to sue for the greater of \$1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown. Makes conforming changes.

SECTION 6. Effective date: September 1, 2001.

Makes application of this Act prospective.