

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 814

By: Leftwich

AS INTRODUCED

An Act relating to professions and occupations; creating the Protection of Required Reporting for Health Care Professionals Act; citing act; defining terms; prohibiting retaliatory action against any employee for specified actions; stating conditions under which prohibition shall not apply; deeming act; providing for actions by certain employee; providing precedent to bringing certain action; specifying possible court remedies; providing for filing of a counterclaim; requiring development and distribution and providing for content of certain notice; providing fine for noncompliance; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 732.1 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Protection of Required Reporting for Health Care Professionals Act".

B. As used in the Protection of Required Reporting for Health Care Professionals Act:

1. "Health care professional" means any person who performs services for wages or other remuneration under the control and direction of any public or private employer;

2. "Employer" means a hospital, a nursing facility, or a licensed health care provider including, but not limited to, a home health agency or a hospice;

3. "Improper quality of patient care" means any practice, procedure, action or failure to act of an employee or employer that violates any provision of the Oklahoma Nursing Practice Act, an

employer's policies, or any other established standard of care related to public or patient health or safety;

4. "Public body" means:

- a. the United States Congress, any state legislature or any popularly elected local government body, or any member or employee thereof,
- b. any federal, state or local judiciary, or any member or employee thereof, or any jury,
- c. any federal, state or local regulatory, administrative, or public agency or authority, or instrumentality thereof,
- d. any federal, state, or local law enforcement agency, prosecutorial office, or police or peace officer, or
- e. any division, board, bureau, office, committee, or commission of any of the public bodies described in this subdivision;

5. "Retaliatory action" means discharge, threat, suspension, demotion, denial of promotion, discrimination, or any other adverse employment action regarding the employee's compensation, terms, conditions, location, or privileges of employment as a result of required reporting; and

6. "Supervisor" means any person who has the authority to direct and control the work performance of an employee.

C. No employer shall take retaliatory action against any employee because the employee does any of the following:

1. Discloses or threatens to disclose to any person or entity any activity, policy, practice, procedure, action, or failure to act of the employer or agent of the employer that the employee reasonably believes is a violation of any law or that the employee reasonably believes constitutes improper quality of patient care.

2. Provides information to, or testifies before, any public body conducting an investigation, a hearing, or an inquiry that

involves allegations that the employer has violated any law or has engaged in behavior constituting improper quality of patient care.

3. Objects to or refuses to participate in any activity, policy, or practice of the employer or agent that the employee reasonably believes is in violation of a law or constitutes improper quality of patient care.

D. Paragraphs 1 and 3 of subsection C of this section shall not apply unless an employee first reports the alleged violation of law or improper quality of patient care to the employer, supervisor, or other person designated by the employer to address reports by employees of improper quality of patient care, and the employer has had a reasonable opportunity to address the violation. The employer shall address the violation under its compliance plan, if one exists.

E. Nothing in this act shall be deemed to diminish the rights, privileges or remedies of any employee under any law or employment contract.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 732.2 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. An employee aggrieved by a violation of this section may:

1. Utilize any available internal process, grievance procedure or similar process available to the employee to maintain or restore any loss of employment rights with the employer; or

2. Thereafter, bring an action in the district court of the county in which the violation is alleged to have occurred.

B. The completion of an internal process, grievance procedure or similar process under the provisions of paragraph 1 of subsection A of this section shall be a condition precedent to bringing an action in district court pursuant to the provisions of paragraph 2 of subsection A of this section.

C. If the court finds that the employer has violated the provisions of paragraph 2 of subsection C of Section 1 of this act, the court shall order, as appropriate:

1. Reinstatement of the employee, including employment benefits, seniority and the same or an equivalent position, shift schedule, or work hours as the employee had before the retaliatory action;

2. Payment of back pay, lost wages, benefits and other remuneration;

3. Any appropriate injunctive relief;

4. Compensatory damages;

5. Punitive damages;

6. Attorney fees; or

7. Any other appropriate relief.

D. An employee named as a defendant in a civil action in retaliation for filing a report required, authorized, or reasonably believed to be required or authorized under this act may file a counterclaim in the pending action or prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney fees and actual and punitive damages, if the suit is determined to be frivolous, unreasonable or taken in bad faith.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 732.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

A. No later than December 1, 2005, the Commissioner of Labor shall develop and distribute to each employer a standard notice as provided in this section. Each notice shall be in clear and understandable language and shall include:

1. A summary of this act;

2. That an employee, in order to receive the protections of this act, must report, pursuant to the provisions of subsection D of

Section 1 of this act, to the employer, to the supervisor, or to the person designated to receive notifications; and

3. A space for the name, title and contact information of the person to whom the employee must make a report under the provisions of subsection D of Section 1 of this act.

B. No later than January 1, 2006, each employer shall post the notice in the employer's place of business to inform the employees of their protections and obligations under this act. The employer shall post the notice in a prominent and accessible location in the workplace. The employer shall indicate on the notice the name or title of the individual the employer has designated to receive notifications pursuant to the provisions of subsection D of Section 1 of this act.

C. An employer who violates this section by not posting the notice required by subsection B of this section shall be liable for a civil fine of One Hundred Dollars (\$100.00) for each day of willful violation.

SECTION 4. This act shall become effective November 1, 2005.

50-1-203

CJ

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