

Department of Legislative Services

Maryland General Assembly

2002 Session

FISCAL NOTE

Revised

House Bill 329

(Delegate Mandel, *et al.*)

Economic Matters

Finance

Health Care Worker Whistleblower Protection Act

This bill prohibits an employer from taking or refusing to take certain personnel actions regarding licensed or certified health care employees who disclose unlawful behavior or refuse to participate in unlawful behavior. The employees must have a good faith belief that the employer is engaged in unlawful activity, and that it poses a substantial and specific danger to public health or safety.

Fiscal Summary

State Effect: It is expected that the bill's requirements could be met with existing resources.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: This bill prohibits an employer from taking or refusing to take certain actions regarding a health care employee because the employee discloses or threatens to disclose, to a supervisor or board, an act or policy of the employer that violates a law, rule, or regulation. The bill's provisions apply to an employee who testifies before any public body that is conducting an investigation into an employer's violation of a law, rule, or regulation, or if an employee objects to or refuses to take any action that violates a law, rule, or regulation. This bill does not apply to State employees.

The protection provided by the bill applies if the employee has a reasonable, good faith belief that the employer has, or still is, engaged in an action or policy that is a violation of law, rule, or regulation, and poses a substantial, specific public health safety risk. Also, the employee must report the employer's acts to a supervisor or administrator in writing and provide the employer with a reasonable opportunity to correct the situation. In the alternative, if the employer has a corporate compliance plan specifying who to notify in the event of a violation, the employee must comply with the plan.

A health care employee who is subject to a violation of the bill's provisions may bring a civil suit in the county where the alleged violation occurred, where the employee resides, or where the employer maintains principal offices in Maryland. The civil action must be brought within one year after the alleged violation or within one year after the employee first became aware of the alleged violation.

A court is authorized to issue an injunction, reinstate the employee, and remove an adverse personnel record related to a violation. The court may also reinstate full fringe benefits, require compensation for lost wages and other income, and assess reasonable attorney's fees and litigation expenses against the employer. If the employer prevails, however, the attorney's fees may be assessed against the employee if the court finds that the lawsuit was brought in bad faith and without basis in law or fact.

If a personnel action was based on grounds other than the employee's right to disclose the specified information, that is a defense in a lawsuit.

Current Law: A manager in State government may not take, or refuse to take, a personnel action as a reprisal against an employee who discloses information about abuse of authority, gross waste, gross mismanagement, information about a substantial and specific danger to public health or safety, or an illegal act. The manager may not take a reprisal action against an employee who seeks to file a complaint, pursue an appeal, or pursue any other legitimate relief from a reprisal action. The prohibition against reprisal does not apply to a disclosure that is specifically prohibited by law unless the disclosure is made exclusively to the Attorney General, an investigation is conducted, and, if required, a confidential report is submitted to the Governor.

Background: According to the American Nurses Association, the restructuring of health care and cost cutting measures have frustrated nurses who try to provide care with inadequate resources and little employer support. As of July 2001, nine states (California, Kentucky, Massachusetts, Minnesota, New Jersey, Oregon, Texas, West Virginia, and Wisconsin) have enacted legislation that provides protections for nurses that expose dangerous policies, actions, or practices. Six other states, (Hawaii, Illinois,

Missouri, New York, Pennsylvania, and Rhode Island) have also considered “whistleblower” legislation.

The issue of whistleblower protection has been considered in Maryland by the Workplace Issues Subcommittee of the Statewide Commission on the Crisis in Nursing. The commission was created by Chapters 257 and 258 of 2000 (SB 311/HB 363) to address the issues that have led to Maryland’s current severe nursing shortage. At its October 17, 2001 meeting, the subcommittee discussed the creation of whistleblower protection and remedies as a key factor in safe and high quality patient care.

State Expenditures: The Office of Health Care Quality (OHCQ) in the Department of Health and Mental Hygiene advises that the office currently accepts anonymous complaints. OHCQ is concerned that more workers may file complaints, however, if the bill is passed. The Department of Legislative Services (DLS) advises that it is unlikely that the number of new complaints will increase to the point that another position is needed. DLS advises that the bill’s requirements could be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None. However, SB 537 contains similar provisions that establish “whistleblower” protection for nurses. SB 537 was referred to the Education, Health, and Environmental Affairs Committee and was heard on March 8, 2002.

Information Source(s): Department of Health and Mental Hygiene, Department of Budget and Management, American Nurses Association, Department of Legislative Services

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