

BILL ANALYSIS

Senate Research Center

H.B. 311
By: Villarreal (Shapleigh)
Health & Human Services
5/10/2003
Engrossed

DIGEST AND PURPOSE

Currently, the Board of Vocational Nurse Examiners (BVNE) may only state what it believes is appropriate regarding whether a licensed vocational nurse (LVN) may perform certain tasks under specific settings because LVNs are licensed under a “title-control” act. H.B. 311 would convert the Vocational Nurse Act (Chapter 302, Occupations Code) from a “title-control” act to a “practice-control” act, thereby allowing BVNE to define what type of direct patient care may be performed by an LVN and in which settings. Also, a practice-control act conveys the legal protection of “safe harbor,” a right provided to registered nurses, medical doctors, and other licensed healthcare professionals, which allows the professional to refuse to perform a task that he or she has not been trained to perform.

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 Subchapter A, Chapter 302, Occupations Code, by adding Section 302.0001, as follows:

Sec. 302.0001. SHORT TITLE. Authorizes this chapter to be cited as the Licensed Vocational Nursing Practice Act.

SECTION 2. Amends Section 302.003, Occupations Code, as follows:

Sec. 302.003. APPLICATION OF CHAPTER. (a) Provides that this chapter does not apply to certain types of nursing care, including:

- (1) gratuitous nursing care of the sick that is provided by a friend, rather than nursing of the sick provided without charge by a friend;
- (2) nursing care provided by a registered nurse licensed under Chapter 301 (Registered Nurses);
- (3) nursing care provided during a disaster under the state emergency management plan under Section 418.042 (State Emergency Management Plan), Government Code, if the person providing the care does not represent himself or herself as a licensed vocational nurse (LVN), unless that person is licensed in another state;
- (4) nursing care in which treatment is provided exclusively by prayer or spiritual means;
- (5) an unlicensed person acting under the delegated authority of certain persons;
- (6) an act performed by a person licensed by another state agency provided that the act is authorized by the statute under which the person is licensed;

(7) nursing practice that is incidental to a program of study being undertaken by a student enrolled in a vocational nurse education program that is accredited by the Board of Vocational Nurse Examiners (board) and if the program of study is leading to an initial license as an LVN; or

(8) nursing practice by an LVN or licensed practical nurse who is licensed in another state and who is in this state on a nonroutine basis for up to 120 hours for the purpose of providing certain types of care. Creates Subsection (a) from existing text and adds and amends proposed language.

(b) Provides that this chapter does not authorize the practice of medicine as defined by Chapter 151 (General Provisions). Creates Subsection (b) from existing text, deletes existing text, and adds new language.

SECTION 3. Amends Section 302.056(b), Occupations Code, to authorize a board member to receive reimbursement for travel expenses as provided by the General Appropriations Act. Deletes existing text prohibiting a board member from receiving reimbursement for travel expenses other than transportation expenses.

SECTION 4. Amends Section 302.151, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Authorizes the board to adopt and enforce rules consistent with this chapter and necessary to perform certain tasks. Deletes existing text authorizing the board to implement the purposes of this chapter. Makes nonsubstantive changes.

(c) Requires rules adopted by the board related to the scope of the practice of vocational nursing to be consistent with this chapter and other law.

SECTION 5. Amends Subchapter D, Chapter 302, Occupations Code, by adding Section 302.159, as follows:

Sec. 302.159. **ADVISORY COMMITTEE.** (a) Requires the Practice Advisory Committee (advisory committee) to advise the Board of Vocational Nurse Examiners (BVNE) regarding rules related to the scope of the practice of vocational nursing.

(b) Provides that the advisory committee is appointed by BVNE and consists of certain persons as members.

(c) Provides that the member of the advisory committee appointed under Subdivision (b)(1) serves as the presiding officer of the advisory committee.

(d) Provides that members of the advisory committee other than the members appointed under Subdivisions (b)(1), (2), and (13) are not entitled to reimbursement for expenses.

SECTION 6. Amends Subchapter E, Chapter 302, Occupations Code, by adding Section 302.207, as follows:

Sec. 302.207. **MANDATORY REPORTING REQUIREMENTS.** (a) Requires certain employers of a licensed vocational nurse to report to BVNE the name of each licensed vocational nurse whose employment is terminated, or who resigns to avoid termination, for engaging in any conduct specified by Section 302.401 or 302.402.

(b) Provides that a person is not liable in a civil action for a failure to report as required by Subsection (a).

(c) Authorizes the appropriate state licensing agency to take action against a person regulated by the agency for a failure to report as required by Subsection

(a).

SECTION 7. Amends Section 302.255(a), Occupations Code, to require either the director of education (director) or the director's designee to visit and survey each vocational nursing institution for the purpose of determining whether certain board requirements are being met.

SECTION 8. Amends Section 302.256(a), Occupations Code, to require the director or the director's designee to survey periodically each vocational nurse education program in Texas.

SECTION 9. Amends Section 302.301(a), Occupations Code, to prohibit a person from practicing vocational nursing unless the person holds a license under this chapter.

SECTION 10. Amends Section 302.307(b), Occupations Code, to provide that a temporary permit expires on the date the board notifies the applicant that he or she has failed the examination. Deletes existing text providing that a temporary permit expires on the date a failing examination result for the applicant is reported to the board.

SECTION 11. Amends Sections 302.403 and 302.409, Occupations Code, as follows:

Sec. 302.403. Deletes existing text relating to written charges filed by the secretary-treasurer.

Sec. 302.409. Deletes existing text specifying that the authorization to appeal a certain order is in a district court of the county of the appellant's residence.

SECTION 12. Amends Subchapter I, Chapter 302, Occupations Code, by adding Section 302.412, as follows:

302.412. CONFIDENTIALITY. (a) Provides that a complaint and investigation concerning a licensed vocational nurse under this subchapter, and all information and material compiled by BVNE in connection with the complaint and investigation, are restricted in certain manners.

(b) Authorizes information regarding a complaint and an investigation of a licensed vocational nurse to be disclosed to certain persons, notwithstanding Subsection (a).

(c) Provides that the filing of formal charges against a licensed vocational nurse by BVNE, the nature of those charges, disciplinary proceedings of BVNE, and final disciplinary actions, including warnings and reprimands, by BVNE are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code (Public Information).

SECTION 13. Amends Section 302.501, Occupations Code, as follows:

(a) Created from existing text.

(b) Authorizes a petition under this section to be filed in a district court in certain counties.

SECTION 14. Amends Chapter 302, Occupations Code, by adding Subchapter L, as follows:

SUBCHAPTER L. PRACTICE BY LICENSE HOLDER

Sec. 302.551. SUPERVISION AND DELEGATION. (a) Defines "delegate."

(b) Authorizes a licensed vocational nurse to only practice under the supervision of certain persons authorized to order the administration of medications and treatments.

(c) Prohibits a licensed vocational nurse from delegating a health care task, activity, or function to another person.

Sec. 302.552. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT. (a) Prohibits a person from taking certain actions against a licensed vocational nurse who refuses to engage in an act or omission relating to patient care that would constitute a ground for disciplinary action under Section 302.403 if the licensed vocational nurse notifies the person at the time of the refusal that the act or omission meets certain conditions.

(b) Provides that an act by a person under Subsection (a) does not constitute a violation of this section if a nursing peer review committee under Chapter 303 determines certain conditions of the act or omission.

(c) Prohibits a licensed vocational nurse's rights under this section from being nullified by a contract.

(d) Authorizes an appropriate licensing agency to take action against a person who violates this section.

Sec. 302.553. IMMUNITY FROM LIABILITY FOR PROVIDING OR RELYING ON INFORMATION. (a) Prohibits a person from being subject to liability for damages in a civil action if the person, in good action, provides BVNE certain information.

(b) Prohibits BVNE and the staff of BVNE from being subject to liability for damages in a civil action for taking action in reliance on information provided under Subsection (a).

Sec. 302.554. PROTECTION FOR REPORTING CERTAIN INFORMATION. Prohibits a person from taking certain actions against a person who, in good faith, provides information to BVNE as provided by Section 302.553(a).

SECTION 15. Amends Section 303.002(b), Occupations Code, to require BVNE to enter into a memorandum of understanding with each state agency that licenses, registers, or certifies a facility required by law to have a nursing, rather than registered nurse, peer review committee. Makes a conforming change.

SECTION 16. Amend Sections 303.005, Occupations Code, by amending Subsections (a), (b), (c), (d), and (f) and adding Subsection (h), as follows:

(a)-(f) Deletes "registered" as a modifier for "nurse."

(h) Provides that a person is not required to provide a peer review determination under this section for a request made by certain nurses.

SECTION 17. Amends Section 531.051(f), Government Code, to make conforming and nonsubstantive changes.

SECTION 18. Repealer: Sections 302.057(c) and (d) (Officers), Occupations Code.

SECTION 19. (a) Effective date: September 1, 2003.

(b) Requires BVNE, as soon as practicable on or after the effective date of this Act, to appoint the members of the advisory committee established under Section 302.159, Occupations Code, as added by this Act.