

## **BILL ANALYSIS**

Senate Research Center  
78R1911 SMH-F

S.B. 241  
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Health and Human Services  
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As Filed

### **DIGEST AND PURPOSE**

Currently, the Board of Vocational Nurse Examiners (BVNE) may only state what it believes is appropriate regarding whether a licensed vocational nurses (LVN) may perform certain tasks under specific settings because LVNs are licensed under a “title-control” act. As proposed, S.B. 241 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**

Rulemaking authority previously granted to the Board of Vocational Nurse Examiners is modified in SECTION 4 (Section 302.151, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 302A, 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 act performed by a person under the control or supervision of or at the instruction of a person licensed by the Texas State Board of Medical Examiners;

(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(b), Occupations Code, to authorize the board to adopt and enforce, rather than adopt, rules in accordance with this chapter and necessary to perform its duties; to regulate the practice of vocational nursing; to establish standards of professional conduct for certain nursing professionals; and to determine whether an act constitutes the practice of vocational nursing. Deletes existing text authorizing the board to implement the purposes of this chapter. Makes nonsubstantive changes.

SECTION 5. Amends Section 302.255(a), Occupations Code, to require either the director of education (director) or the director's designee, rather than just the director, to visit and survey each vocational nursing institution for the purpose of determining whether the certain board requirements are being met.

SECTION 6. Amends Section 302.256(a), Occupations Code, to require the director or the director's designee, rather than the board, to survey periodically each vocational nurse education program in Texas.

SECTION 7. 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 8. 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 9. Amends Chapter 302G, Occupations Code, by adding Section 302.312, as follows:

Sec. 302.312. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN CONDUCT.

(a) Prohibits a person from suspending, terminating, or otherwise discriminating against or disciplining an LVN who refuses to engage in an act or omission relating to patient care that would constitute ground for disciplinary action under Section 302.403 (Disciplinary Authority of Board; Methods of Discipline), if the LVN notifies the person at the time of the refusal that the reason for the refusal is that the act or omission either constitutes a ground for disciplinary action by the board or is a violation of this chapter or a rule of the board.

(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 (Nursing Peer Review) determines that the act or omission the LVN refused to engage in was not a ground for a disciplinary action under Section 302.403, or that the act or omission the LVN refused to engage in was a ground for disciplinary action under Section 302.403 and the person rescinds any disciplinary or discriminatory action taken against the LVN, compensates the LVN for lost wages, and restores any lost benefits to the LVN.

(c) Prohibits an LVN'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.

SECTION 10. Repealer: Sections 302.057(c) and (d) (Officers), Occupations Code.

SECTION 11. Effective date: September 1, 2003.