

By: Villarreal

H.B. No. 311

Substitute the following for H.B. No. 311:

By: McReynolds

C.S.H.B. No. 311

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of licensed vocational nurses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 302, Occupations Code, is amended by adding Section 302.0001 to read as follows:

Sec. 302.0001. SHORT TITLE. This chapter may be cited as the Licensed Vocational Nursing Practice Act.

SECTION 2. Section 302.003, Occupations Code, is amended to read as follows:

Sec. 302.003. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) gratuitous nursing care of the sick that is provided [without charge] by a friend;

(2) nursing care provided by a registered nurse licensed under Chapter 301;

(3) nursing care provided during a disaster under the state emergency management plan adopted under Section 418.042, Government Code, if the person providing the care does not represent that the person is a licensed vocational nurse, unless the person is licensed in another state;

(4) nursing care in which treatment is provided solely by prayer or spiritual means;

(5) an unlicensed person acting under the delegated authority of:

1                   (A) a physician licensed by the Texas State Board  
2 of Medical Examiners; or

3                   (B) a registered nurse licensed under Chapter 301  
4 or authorized to practice in this state under Chapter 304, as added  
5 by Section 14.130(a), Chapter 1420, Acts of the 77th Legislature,  
6 Regular Session, 2001;

7                   (6) an act performed by a person licensed by another  
8 state agency if the act is authorized by the statute under which the  
9 person is licensed;

10                   (7) the practice of nursing that is incidental to a  
11 program of study by a student enrolled in a board-accredited  
12 vocational nurse education program leading to an initial license as  
13 a licensed vocational nurse; or

14                   (8) the practice of nursing by a licensed vocational  
15 nurse or licensed practical nurse licensed in another state who is  
16 in this state on a nonroutine basis for a period not to exceed 120  
17 hours to provide:

18                   (A) care to a patient being transported into, out  
19 of, or through this state; or

20                   (B) vocational nursing.

21                   (b) This chapter does not authorize the practice of medicine  
22 as defined by Chapter 151. [~~or family member, or~~

23                   ~~[(2) a person who does not:~~

24                   ~~[(A) represent to the public that the person is a~~  
25 ~~licensed vocational nurse; or~~

26                   ~~[(B) use the abbreviation "L.V.N."]~~

27                   SECTION 3. Section 302.056(b), Occupations Code, is amended

1 to read as follows:

2 (b) A board member may [~~not~~] receive reimbursement for  
3 travel expenses [~~, including expenses for meals and lodging, other~~  
4 ~~than transportation expenses. A member is entitled to~~  
5 ~~reimbursement for transportation expenses]~~ as provided by the  
6 General Appropriations Act.

7 SECTION 4. Section 302.151(b), Occupations Code, is amended  
8 to read as follows:

9 (b) The board may adopt and enforce rules consistent with  
10 this chapter and [~~as~~] necessary to:

11 (1) perform [~~govern~~] its duties and conduct  
12 proceedings before the board;

13 (2) regulate the practice of vocational nursing;

14 (3) establish standards of professional conduct for  
15 license holders under this chapter; and

16 (4) determine whether an act constitutes the practice  
17 of vocational nursing [~~and to implement the purposes of this~~  
18 ~~chapter].~~

19 SECTION 5. Subchapter D, Chapter 302, Occupations Code, is  
20 amended by adding Section 302.159 to read as follows:

21 Sec. 302.159. ADVISORY COMMITTEE. (a) The Practice  
22 Advisory Committee shall advise the board regarding rules related  
23 to the scope of the practice of vocational nursing.

24 (b) The advisory committee is appointed by the board and  
25 consists of the following members:

26 (1) a member of the board;

27 (2) a member of the Board of Nurse Examiners;

1           (3) a licensed vocational nurse recommended by the  
2 Licensed Vocational Nurses Association of Texas;

3           (4) a licensed vocational nurse recommended by the  
4 Texas League for Vocational Nurses;

5           (5) a registered nurse recommended by the Texas  
6 Organization of Nurse Executives;

7           (6) a registered nurse recommended by the Texas Nurses  
8 Association;

9           (7) a person recommended by the Texas Association of  
10 Vocational Nurse Educators;

11           (8) a person recommended by the Texas Organization for  
12 the Advancement of Associate Degree Nursing;

13           (9) a person recommended by the Texas Organization of  
14 Baccalaureate and Graduate Nursing Educators;

15           (10) a person recommended by the Texas Hospital  
16 Association;

17           (11) a person recommended by the Texas Health Care  
18 Association or the Texas Association of Homes and Services for the  
19 Aging;

20           (12) a person recommended by the Texas Association for  
21 Home Care;

22           (13) a person recommended by the Texas Department of  
23 Mental Health and Mental Retardation; and

24           (14) a person recommended by the Texas Association of  
25 School Nurses.

26           (c) The member of the advisory committee appointed under  
27 Subdivision (b)(1) serves as the presiding officer of the

1 committee.

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

5 SECTION 6. Subchapter E, Chapter 302, Occupations Code, is  
6 amended by adding Section 302.207 to read as follows:

7 Sec. 302.207. MANDATORY REPORTING REQUIREMENTS. (a) A  
8 hospital, nursing home, or other employer of a licensed vocational  
9 nurse shall report to the board the name of each licensed vocational  
10 nurse whose employment is terminated, or who resigns to avoid  
11 termination, for engaging in any conduct specified by Section  
12 302.401 or 302.402.

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

15 (c) The appropriate state licensing agency may take action  
16 against a person regulated by the agency for a failure to report as  
17 required by Subsection (a).

18 SECTION 7. Section 302.255(a), Occupations Code, is amended  
19 to read as follows:

20 (a) The director of education or the director of education's  
21 designee shall visit and survey each vocational nursing institution  
22 to determine whether the board's minimum requirements for  
23 vocational nurse education programs are being met.

24 SECTION 8. Section 302.256(a), Occupations Code, is amended  
25 to read as follows:

26 (a) The director of education or the director of education's  
27 designee [~~board~~] periodically shall survey each vocational nurse

1 education program offered in this state. A written report of the  
2 survey must be submitted to the board.

3 SECTION 9. Section 302.301(a), Occupations Code, is amended  
4 to read as follows:

5 (a) A person may not practice vocational nursing or use the  
6 designation "Licensed Vocational Nurse" or the abbreviation  
7 "L.V.N." unless the person holds a license under this chapter.

8 SECTION 10. Section 302.307(b), Occupations Code, is  
9 amended to read as follows:

10 (b) A temporary permit expires on the date:

11 (1) the applicant receives a permanent license from  
12 the board; or

13 (2) the board notifies the applicant that the  
14 applicant has failed the examination [~~a failing examination result~~  
15 ~~for the applicant is reported to the board~~].

16 SECTION 11. Sections 302.403 and 302.409, Occupations Code,  
17 are amended to read as follows:

18 Sec. 302.403. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF  
19 DISCIPLINE. After a hearing is held on specific sworn written  
20 charges [~~filed by the secretary-treasurer~~], if the board determines  
21 that a person has committed an act listed in Section 302.402, the  
22 board may:

23 (1) refuse to admit the person to a board examination;

24 (2) deny the person's application for a license,  
25 license renewal, or temporary permit;

26 (3) issue a warning or reprimand;

27 (4) suspend or revoke the person's license as a

1 vocational nurse; or

2 (5) place on probation a person whose license has been  
3 suspended.

4 Sec. 302.409. APPEAL. A person may appeal a board order  
5 disciplining the person [~~in a district court of the county of the~~  
6 ~~person's residence~~].

7 SECTION 12. Subchapter I, Chapter 302, Occupations Code, is  
8 amended by adding Section 302.412 to read as follows:

9 Sec. 302.412. CONFIDENTIALITY. (a) A complaint and  
10 investigation concerning a licensed vocational nurse under this  
11 subchapter, and all information and material compiled by the board  
12 in connection with the complaint and investigation, are:

13 (1) confidential and not subject to disclosure under  
14 Chapter 552, Government Code; and

15 (2) not subject to disclosure, discovery, subpoena, or  
16 other means of legal compulsion for release to anyone other than the  
17 board or a board employee or agent involved in license holder  
18 discipline.

19 (b) Notwithstanding Subsection (a), information regarding a  
20 complaint and an investigation of a licensed vocational nurse may  
21 be disclosed to:

22 (1) a person involved with the board in a disciplinary  
23 action against the licensed vocational nurse;

24 (2) a vocational nursing licensing or disciplinary  
25 board in another jurisdiction;

26 (3) a peer assistance program approved by the board  
27 under Chapter 467, Health and Safety Code;

1           (4) a law enforcement agency; or

2           (5) a person engaged in bona fide research, if all  
3 information identifying a specific individual has been deleted.

4           (c) The filing of formal charges against a licensed  
5 vocational nurse by the board, the nature of those charges,  
6 disciplinary proceedings of the board, and final disciplinary  
7 actions, including warnings and reprimands, by the board are not  
8 confidential and are subject to disclosure in accordance with  
9 Chapter 552, Government Code.

10           SECTION 13. Section 302.501, Occupations Code, is amended  
11 to read as follows:

12           Sec. 302.501. INJUNCTIONS. (a) On petition of the board, a  
13 district court may enjoin a person who is violating this chapter  
14 from continuing the violation.

15           (b) A petition under this section may be filed in a district  
16 court in:

17                   (1) Travis County;

18                   (2) the county in which the defendant resides; or

19                   (3) the county in which the violation is occurring.

20           SECTION 14. Chapter 302, Occupations Code, is amended by  
21 adding Subchapter L to read as follows:

22                   SUBCHAPTER L. PRACTICE BY LICENSE HOLDER

23           Sec. 302.551. SUPERVISION AND DELEGATION. (a) In this  
24 section, "delegate" means to grant a person the legal authority to  
25 perform an act the person is not otherwise legally authorized to  
26 perform.

27           (b) A licensed vocational nurse may only practice under the



1 supervision of a registered nurse, physician, dentist, podiatrist,  
2 or other health care provider authorized to order the  
3 administration of medications and treatments.

4 (c) A licensed vocational nurse may not delegate a health  
5 care task, activity, or function to another person.

6 Sec. 302.552. PROTECTION FOR REFUSAL TO ENGAGE IN CERTAIN  
7 CONDUCT. (a) A person may not suspend, terminate, or otherwise  
8 discipline or discriminate against a licensed vocational nurse who  
9 refuses to engage in an act or omission relating to patient care  
10 that would constitute a ground for disciplinary action under  
11 Section 302.403 if the licensed vocational nurse notifies the  
12 person at the time of the refusal that the reason for refusing is  
13 that the act or omission:

14 (1) constitutes a ground for disciplinary action by  
15 the board; or

16 (2) is a violation of this chapter or a rule of the  
17 board.

18 (b) An act by a person under Subsection (a) does not  
19 constitute a violation of this section if a nursing peer review  
20 committee under Chapter 303 determines:

21 (1) that the act or omission the licensed vocational  
22 nurse refused to engage in was not a ground for disciplinary action  
23 under Section 302.403; or

24 (2) that:

25 (A) the act or omission the licensed vocational  
26 nurse refused to engage in was a ground for disciplinary action  
27 under Section 302.403; and

1                   (B) the person:

2                   (i) rescinds any disciplinary or  
3 discriminatory action taken against the licensed vocational nurse;

4                   (ii) compensates the licensed vocational  
5 nurse for lost wages; and

6                   (iii) restores to the licensed vocational  
7 nurse any lost benefits.

8                   (c) A licensed vocational nurse's rights under this section  
9 may not be nullified by a contract.

10                   (d) An appropriate licensing agency may take action against  
11 a person who violates this section.

12                   Sec. 302.553. IMMUNITY FROM LIABILITY FOR PROVIDING OR  
13 RELYING ON INFORMATION. (a) A person may not be subject to  
14 liability for damages in a civil action if the person, in good  
15 faith, provides to the board information relating to:

16                   (1) an alleged incident of negligence or malpractice  
17 on the part of a holder of or an applicant for a license under this  
18 chapter; or

19                   (2) the qualifications, fitness, or character of a  
20 holder of or an applicant for a license under this chapter.

21                   (b) The board and the staff of the board may not be subject  
22 to liability for damages in a civil action for taking action in  
23 reliance on information provided under Subsection (a).

24                   Sec. 302.554. PROTECTION FOR REPORTING CERTAIN  
25 INFORMATION. A person may not suspend, terminate, or otherwise  
26 discipline or discriminate against a person who, in good faith,  
27 provides information to the board as provided by Section

1 302.553(a).

2 SECTION 15. Section 303.002(b), Occupations Code, is  
3 amended to read as follows:

4 (b) The board shall enter into a memorandum of understanding  
5 with each state agency that licenses, registers, or certifies a  
6 facility required by law to have a nursing [~~registered nurse~~] peer  
7 review committee. The memorandum of understanding must:

8 (1) state the actions the board and agency are to take  
9 to encourage compliance with the requirement to have a nursing  
10 [~~registered nurse~~] peer review committee; and

11 (2) be adopted as a rule of the board and the agency.

12 SECTION 16. Sections 303.005(a)-(d) and (f), Occupations  
13 Code, are amended to read as follows:

14 (a) In this section, "duty to a patient" means conduct  
15 required by standards of practice or professional conduct adopted  
16 by the board. The term includes administrative decisions directly  
17 affecting a [~~registered~~] nurse's ability to comply with that duty.

18 (b) If a person who regularly employs, hires, or otherwise  
19 contracts for the services of at least 10 [~~registered~~] nurses  
20 requests one of those nurses to engage in conduct that the nurse  
21 believes violates a [~~registered~~] nurse's duty to a patient, the  
22 nurse may request, on a form produced by the board, a determination  
23 by a nursing peer review committee under this chapter of whether the  
24 conduct violates a [~~registered~~] nurse's duty to a patient.

25 (c) A [~~registered~~] nurse who in good faith requests a peer  
26 review determination under Subsection (b):

27 (1) may not be disciplined or discriminated against

1 for making the request;

2 (2) may engage in the requested conduct pending the  
3 peer review;

4 (3) is not subject to the reporting requirement under  
5 Subchapter I, Chapter 301; and

6 (4) may not be disciplined by the board for engaging in  
7 that conduct while the peer review is pending.

8 (d) The determinations of the peer review committee shall be  
9 considered in a decision to discipline the nurse, but the  
10 determinations are not binding if a [~~registered~~] nurse  
11 administrator believes in good faith that the peer review committee  
12 has incorrectly determined a [~~registered~~] nurse's duty.

13 (f) A [~~registered~~] nurse's rights under this section may not  
14 be nullified by a contract.

15 SECTION 17. Section 531.051(f), Government Code, is amended  
16 to read as follows:

17 (f) Sections [~~Section~~] 301.251(a) and 302.301(a),  
18 Occupations Code, do [~~does~~] not apply to delivery of a service for  
19 which payment is provided under the voucher payment program  
20 developed under this section if:

21 (1) the person who delivers the service:

22 (A) has not been denied a license under Chapter  
23 301 or 302, Occupations Code;

24 (B) has not been issued a license under Chapter  
25 301 or 302, Occupations Code, that is revoked or suspended; and

26 (C) provides a service listed under Subsection  
27 (h); and

1           (2) the consumer who receives the service:

2                   (A) has a functional disability and the service  
3 would have been performed by the consumer, or the parent or guardian  
4 for the consumer, except for that disability; and

5                   (B) if:

6                           (i) the consumer is capable of training the  
7 person in the proper performance of the service, the consumer  
8 directs the person to deliver the service; or

9                           (ii) the consumer is not capable of  
10 training the person in the proper performance of the service, the  
11 consumer's parent or guardian is capable of training the person in  
12 the proper performance of the service and directs the person to  
13 deliver the service.

14           SECTION 18. Sections 302.057(c) and (d), Occupations Code,  
15 are repealed.

16           SECTION 19. (a) This Act takes effect September 1, 2003.

17                   (b) As soon as practicable on or after the effective date of  
18 this Act, the Board of Vocational Nurse Examiners shall appoint the  
19 members of the Practice Advisory Committee established under  
20 Section 302.159, Occupations Code, as added by this Act.