

By: McReynolds

H.B. No. 2324

Substitute the following for H.B. No. 2324:

By: Naishtat

C.S.H.B. No. 2324

A BILL TO BE ENTITLED

AN ACT

relating to the practice and regulatory environment for registered nurses and licensed vocational nurses.

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

SECTION 1. Subchapter D, Chapter 301, Occupations Code, is amended by adding Sections 301.1605 and 301.1606 to read as follows:

Sec. 301.1605. PILOT PROGRAMS FOR INNOVATIVE APPLICATIONS.

(a) The board may approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of professional nursing.

(b) The board shall specify the procedures to be followed in applying for approval of a pilot program. The board may condition approval of a program on compliance with this section and rules adopted under this section.

(c) In approving a pilot program, the board may grant the program an exception to the mandatory reporting requirements of Sections 301.401-301.409 or to a rule adopted under this chapter or Chapter 303 that relates to the practice of professional nursing, including education and reporting requirements for registered nurses. The board may not grant an exception to the mandatory reporting requirements unless the program:

(1) is designed to evaluate the efficiency of alternative reporting methods; and

1 (2) provides consumers adequate protection from
2 registered nurses whose continued practice is a threat to public
3 safety.

4 Sec. 301.1606. PILOT PROGRAMS ON NURSE REPORTING SYSTEMS.

5 (a) Before January 1, 2004, the board shall solicit proposals for
6 pilot programs designed to evaluate the efficacy and effect on
7 protection of the public of reporting systems designed to encourage
8 identification of system errors.

9 (b) The board may grant a pilot program approved under this
10 section an exception to the mandatory reporting requirements of
11 Sections 301.401-301.409 or to a rule adopted under this chapter or
12 Chapter 303 that relates to the practice of professional nursing,
13 including education and reporting requirements for registered
14 nurses. If the board grants an exception, the board may require
15 that the program:

16 (1) provide for the remediation of the deficiencies of
17 a registered nurse who has knowledge or skill deficiencies that
18 unless corrected may result in an unreasonable risk to public
19 safety;

20 (2) provide for supervision of the nurse during
21 remediation of deficiencies under Subdivision (1);

22 (3) require reporting to the board of a registered
23 nurse:

24 (A) who fails to satisfactorily complete
25 remediation, or who does not make satisfactory progress in
26 remediation, under Subdivision (1);

27 (B) whose incompetence in the practice of

1 professional nursing would pose a continued risk of harm to the
2 public; or

3 (C) whose error contributed to a patient death or
4 serious patient injury; or

5 (4) provide for a nursing peer review committee to
6 review whether a registered nurse is appropriate for remediation
7 under Subdivision (1).

8 (c) The board may require that the entity conducting a pilot
9 program under this section reimburse the board for the cost of
10 monitoring and evaluating the pilot program.

11 (d) The board may contract with a third party to perform the
12 monitoring and evaluation.

13 (e) The board may limit the number of pilot programs that it
14 approves under this section.

15 SECTION 2. Section 301.251, Occupations Code, is amended by
16 adding Subsection (d) to read as follows:

17 (d) Unless the person holds a license under this chapter or
18 as a vocational nurse under Chapter 302, a person may not use, in
19 connection with the person's name:

20 (1) the title "nurse"; or

21 (2) any other designation tending to imply that the
22 person is licensed to provide nursing care.

23 SECTION 3. The heading to Section 301.303, Occupations
24 Code, is amended to read as follows:

25 Sec. 301.303. CONTINUING COMPETENCY [~~EDUCATION~~].

26 SECTION 4. Sections 301.303(a) and (d), Occupations Code,
27 are amended to read as follows:

1 (a) The board may recognize, prepare, or implement
2 continuing competency [~~education~~] programs for license holders
3 under this chapter and may require participation in continuing
4 competency [~~education~~] programs as a condition of renewal of a
5 license. The programs may allow a license holder to demonstrate
6 competency through various methods, including:

7 (1) completion of targeted continuing education
8 programs; and

9 (2) consideration of a license holder's professional
10 portfolio, including certifications held by the license holder.

11 (d) In adopting rules under Subsection (c), the board shall
12 consider, but is not obligated to approve:

13 (1) a program or provider approved or accredited
14 through the [~~Board of Accreditation of the~~] American Nurses
15 [~~Nurses'~~] Association Credentialing Center [~~or the National~~
16 ~~Federation of Specialty Nursing Organizations~~]; and

17 (2) a nurse in-service program offered by a hospital
18 that is:

19 (A) accredited by the Joint Commission on
20 Accreditation of Healthcare Organizations;

21 (B) certified by Medicare; or

22 (C) maintained or operated by the federal
23 government or the state.

24 SECTION 5. Section 301.351, Occupations Code, is amended by
25 amending Subsection (b) and adding Subsection (c) to read as
26 follows:

27 (b) While interacting with the public in a professional

1 nursing role [~~on duty providing direct care to a patient~~], each
2 licensed registered nurse shall wear a clearly legible [~~an~~]
3 insignia identifying the nurse as a registered nurse. The insignia
4 may not contain information other than:

- 5 (1) the registered nurse designation;
6 (2) the nurse's name, certifications, academic
7 degrees, or practice position; and
8 (3) the name of the employing facility or agency, or
9 other employer.

10 (c) The board may adopt rules establishing specifications
11 for the insignia.

12 SECTION 6. Section 301.401, Occupations Code, is amended to
13 read as follows:

14 Sec. 301.401. GROUNDS FOR REPORTING REGISTERED NURSE. (a)
15 Except as provided by Subsection (b), the [~~The~~] following are
16 grounds for reporting a registered nurse under Section 301.402,
17 301.403, 301.405, or 301.407:

- 18 (1) unnecessary or likely exposure by the registered
19 nurse of a patient or other person to a risk of harm;
20 (2) unprofessional conduct by the registered nurse;
21 (3) failure by the registered nurse to adequately care
22 for a patient;
23 (4) failure by the registered nurse to conform to the
24 minimum standards of acceptable professional nursing practice; or
25 (5) impairment or likely impairment of the registered
26 nurse's practice by chemical dependency.

27 (b) Subsection (a) does not apply to a minor incident, as

1 defined by Section 301.419, if the incident is not required to be
2 reported under a rule adopted under Section 301.419.

3 SECTION 7. Section 301.402, Occupations Code, is amended by
4 adding Subsection (f) to read as follows:

5 (f) A registered nurse may report to the nurse's employer or
6 another entity at which the nurse is authorized to practice any
7 situation that the nurse has reasonable cause to believe exposes a
8 patient to substantial risk of harm as a result of a failure to
9 provide patient care that conforms to minimum standards of
10 acceptable and prevailing professional nursing practice. For
11 purposes of this subsection, the employer or entity includes an
12 employee or agent of the employer or entity.

13 SECTION 8. Subchapter J, Chapter 301, Occupations Code, is
14 amended by adding Section 301.4515 to read as follows:

15 Sec. 301.4515. USE OF CERTAIN NURSING TITLES. Unless the
16 person is practicing under the delegated authority of a registered
17 nurse or is otherwise authorized by state or federal law, a person
18 may not use, in connection with the person's name:

19 (1) the title "nurse aide," "nurse assistant," or
20 "nurse technician"; or

21 (2) any other similar title.

22 SECTION 9. Section 301.457, Occupations Code, is amended by
23 adding Subsection (f) to read as follows:

24 (f) In making a determination under Subsection (e), the
25 board shall review the evidence to determine the extent to which a
26 deficiency in care by the registered nurse was the result of
27 deficiencies in the registered nurse's judgment, knowledge,

1 training, or skill rather than other factors beyond the nurse's
2 control. A determination that a deficiency in care is attributable
3 to a registered nurse must be based on the extent to which the
4 registered nurse's conduct was the result of a deficiency in the
5 registered nurse's judgment, knowledge, training, or skill.

6 SECTION 10. Sections 303.005(a), (b), (c), (d), and (f),
7 Occupations Code, are amended to read as follows:

8 (a) In this section, "duty to a patient" means conduct
9 required by standards of practice or professional conduct adopted
10 by the board for registered nurses or the Board of Vocational Nurse
11 Examiners for licensed vocational nurses. The term includes
12 administrative decisions directly affecting a [~~registered~~] nurse's
13 ability to comply with that duty.

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

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

23 (1) may not be disciplined or discriminated against
24 for making the request;

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

27 (3) is not subject to the reporting requirement under

1 Subchapter I, Chapter 301, or the rules of the board or the Board of
2 Vocational Nurse Examiners; and

3 (4) may not be disciplined by the board or the Board of
4 Vocational Nurse Examiners for engaging in that conduct while the
5 peer review is pending.

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

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

13 SECTION 11. Section 303.006, Occupations Code, is amended
14 by adding Subsection (f) to read as follows:

15 (f) If a peer review committee determines that a nurse has
16 not engaged in conduct required to be reported to the nurse's
17 licensing board, a member of the peer review committee whose
18 knowledge of the nurse's conduct was acquired only through the peer
19 review may not report that nurse to the licensing board for that
20 conduct. A committee member is not prohibited from reporting:

21 (1) the nurse, if the member has knowledge of the
22 nurse's conduct independently of peer review; or

23 (2) the peer review committee to the licensing board,
24 if the member believes the committee made its determination in bad
25 faith.

26 SECTION 12. Chapter 303, Occupations Code, is amended by
27 adding Section 303.011 to read as follows:

1 Sec. 303.011. EVALUATION BY COMMITTEE. In evaluating a
2 nurse's conduct, the nursing peer review committee shall review the
3 evidence to determine the extent to which a deficiency in care by
4 the nurse was the result of deficiencies in the nurse's judgment,
5 knowledge, training, or skill rather than other factors beyond the
6 nurse's control. A determination that a deficiency in care is
7 attributable to a nurse must be based on the extent to which the
8 nurse's conduct was the result of a deficiency in the nurse's
9 judgment, knowledge, training, or skill.

10 SECTION 13. Subchapter B, Chapter 241, Health and Safety
11 Code, is amended by adding Section 241.029 to read as follows:

12 Sec. 241.029. POLICIES AND PROCEDURES RELATING TO WORKPLACE
13 SAFETY. (a) The governing body of a hospital shall adopt policies
14 and procedures related to the work environment for nurses to:

15 (1) improve workplace safety and reduce the risk of
16 injury, occupational illness, and violence; and

17 (2) increase the use of ergonomic principles and
18 ergonomically designed devices to reduce injury and fatigue.

19 (b) The policies and procedures adopted under Subsection
20 (a), at a minimum, must include:

21 (1) evaluating new products and technology that
22 incorporate ergonomic principles;

23 (2) educating nurses in the application of ergonomic
24 practices;

25 (3) conducting workplace audits to identify areas of
26 risk of injury, occupational illness, or violence and recommending
27 ways to reduce those risks;

1 (4) controlling access to those areas identified as
2 having a high risk of violence; and

3 (5) promptly reporting crimes committed against
4 nurses to appropriate law enforcement agencies.

5 SECTION 14. A hospital must adopt policies and procedures
6 required by Section 241.029, Health and Safety Code, as added by
7 this Act, not later than January 1, 2004.

8 SECTION 15. This Act takes effect immediately if it
9 receives a vote of two-thirds of all the members elected to each
10 house, as provided by Section 39, Article III, Texas Constitution.
11 If this Act does not receive the vote necessary for immediate
12 effect, this Act takes effect September 1, 2003.