

By: McReynolds

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 of and including the 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-.409 or to specific rules governing the practice, education or reporting of registered nurses adopted under this chapter or Chapter 303. 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

(2) provides consumers adequate protection from

1 registered nurses whose continued practice is a threat to public  
2 safety.

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

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

8 (b) If the board grants an exception to the mandatory  
9 reporting requirements of Sections 301.401-.409 or to the specific  
10 rules governing the practice, education or reporting of registered  
11 nurses adopted under this chapter or Chapter 303, the board may  
12 require that the program:

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

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

19 (3) require reporting to the board of a registered  
20 nurse:

21 (A) who fails to satisfactorily complete  
22 remediation, or who does not make satisfactory progress in  
23 remediation, under Subdivision (1);

24 (B) whose incompetence in the practice of  
25 professional nursing would pose a continued risk of harm to the  
26 public; or

27 (C) whose error contributed to a patient death or

1 serious patient injury; or

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

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

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

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

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

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

17 (1) the title "nurse"; or

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

20 SECTION 3. Section 301.303, Occupations Code, is amended to  
21 read as follows:

22 Sec. 301.303. CONTINUING COMPETENCY [~~EDUCATION~~]. (a) The  
23 board may recognize, prepare, or implement a continuing competency  
24 program [~~education programs~~] for license holders under this chapter  
25 and may require participation in the program [~~continuing education~~  
26 ~~programs~~] as a condition of renewal of a license. The board may  
27 allow a license holder to demonstrate continued competency through

1 various mechanisms including targeted continuing education,  
2 certification, and professional portfolio.

3 (b) The board may not require participation in more than a  
4 total of 20 hours of continuing education in a two-year licensing  
5 period and may not require that more than 10 hours of the continuing  
6 education consist of classroom instruction in approved programs.  
7 The remaining hours of continuing education may consist of any  
8 combination of:

- 9 (1) classroom instruction;  
10 (2) institutional-based instruction; or  
11 (3) individualized study.

12 (c) If the board requires participation in continuing  
13 education programs as a condition of license renewal, the board by  
14 rule shall establish a system for the approval of programs and  
15 providers of continuing education.

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

18 (1) a program or provider approved or accredited  
19 through the [~~Board of Accreditation of the~~] American Nurses  
20 [~~Nurses'~~] Association Credentialing Center [~~or the National~~  
21 ~~Federation of Specialty Nursing Organizations~~]; and

22 (2) a nurse in-service program offered by a hospital  
23 that is:

24 (A) accredited by the Joint Commission on  
25 Accreditation of Healthcare Organizations;

26 (B) certified by Medicare; or

27 (C) maintained or operated by the federal

1 government or the state.

2 (e) The board may adopt [~~other~~] rules as necessary to  
3 implement this section.

4 (f) The board may assess each program and provider under  
5 this section a fee in an amount that is reasonable and necessary to  
6 defray the costs incurred in approving programs and providers.

7 SECTION 4. Section 301.351, Occupations Code, is amended by  
8 amending Subsection (b) and adding Subsection (c) to read as  
9 follows:

10 (b) While interacting with the public in a professional  
11 nursing role [~~on duty providing direct care to a patient~~], each  
12 licensed registered nurse shall wear a clearly legible [~~an~~]  
13 insignia identifying the nurse as a registered nurse. The insignia  
14 may not contain information other than:

15 (1) the registered nurse designation;

16 (2) the nurse's name, certifications, academic  
17 degrees, or practice position; and

18 (3) the name of the employing facility or agency.

19 (c) The board may adopt rules establishing specifications  
20 for the insignia.

21 SECTION 5. Section 301.401, Occupations Code, is amended to  
22 read as follows:

23 Sec. 301.401. GROUNDS FOR REPORTING REGISTERED NURSE. (a)  
24 Except as provided by Subsection (b), the [~~The~~] following are  
25 grounds for reporting a registered nurse under Section 301.402,  
26 301.403, 301.405, or 301.407:

27 (1) unnecessary or likely exposure by the registered

1 nurse of a patient or other person to a risk of harm;

2 (2) unprofessional conduct by the registered nurse;

3 (3) failure by the registered nurse to adequately care  
4 for a patient;

5 (4) failure by the registered nurse to conform to the  
6 minimum standards of acceptable professional nursing practice; or

7 (5) impairment or likely impairment of the registered  
8 nurse's practice by chemical dependency.

9 (b) Subsection (a) does not apply to a minor incident, as  
10 defined by Section 301.419, that is not required to be reported  
11 pursuant to rules adopted by the board under Section 301.419.

12 SECTION 6. Section 301.402, Occupations Code, is amended by  
13 adding Subsection (f) to read as follows:

14 (f) A registered nurse may report to the nurse's employer,  
15 an entity at which the nurse is authorized to practice, or an  
16 appropriate agent of such employer or entity any situation that the  
17 nurse has reasonable cause to believe exposes a patient to  
18 substantial risk of harm as a result of a failure to provide patient  
19 care that conforms to minimum standards of acceptable and  
20 prevailing professional nursing practice. For purposes of this  
21 subsection, the employer or entity includes any employee or agent  
22 of that employer or entity.

23 SECTION 7. Subchapter J, Chapter 301, Occupations Code, is  
24 amended by adding Section 301.4515 to read as follows:

25 Sec. 301.4515. USE OF CERTAIN NURSING TITLES. Unless the  
26 person is practicing under the delegated authority of a registered  
27 nurse or is otherwise authorized by state or federal law, a person

1 may not use, in connection with the person's name:

2 (1) the title "nurse aide," "nurse assistant," or  
3 "nurse technician"; or

4 (2) any other similar title.

5 SECTION 8. Section 301.457, Occupations Code, is amended by  
6 adding Subsection (f) to read as follows:

7 (f) In making a determination under Subsection (e), the  
8 board shall review the evidence to determine the extent to which a  
9 deficiency in care by the registered nurse was the result of  
10 deficiencies in the registered nurse's judgment, knowledge,  
11 training, or skill rather than other factors beyond the nurse's  
12 control. A determination that a deficiency in care is attributable  
13 to a registered nurse must be based on the extent to which the  
14 registered nurse's conduct was the result of a deficiency in the  
15 registered nurse's judgment, knowledge, training, or skill.

16 SECTION 9. Sections 303.005(a), (b), (c), (d), and (f),  
17 Occupations Code, are amended to read as follows:

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

24 (b) If a person who regularly employs, hires, or otherwise  
25 contracts for the services of at least 10 [~~registered~~] nurses  
26 requests one of those nurses to engage in conduct that the nurse  
27 believes violates a [~~registered~~] nurse's duty to a patient, the

1 nurse may request, on a form produced by the board, a determination  
2 by a nursing peer review committee under this chapter of whether the  
3 conduct violates a [~~registered~~] nurse's duty to a patient.

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

6 (1) may not be disciplined or discriminated against  
7 for making the request;

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

10 (3) is not subject to the reporting requirement under  
11 Subchapter I, Chapter 301, or the rules of the board or the Board of  
12 Vocational Nurse Examiners; and

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

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

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

23 SECTION 10. Section 303.006, Occupations Code, is amended  
24 by adding Subsection (f) to read as follows:

25 (f) If a peer review committee determines that a nurse has  
26 not engaged in conduct required to be reported to the nurse's  
27 licensing board, a member of the peer review committee whose

1 knowledge of the nurse's conduct was acquired only through the peer  
2 review may not report that nurse to the licensing board for that  
3 conduct. A committee member is not prohibited from reporting:

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

6 (2) the peer review committee to the licensing board,  
7 if the member believes the committee made its determination in bad  
8 faith.

9 SECTION 11. Chapter 303, Occupations Code, is amended by  
10 adding Section 303.011 to read as follows:

11 Sec. 303.011. EVALUATION BY COMMITTEE. In evaluating a  
12 nurse's conduct, the nursing peer review committee shall review the  
13 evidence to determine the extent to which a deficiency in care by  
14 the nurse was the result of deficiencies in the nurse's judgment,  
15 knowledge, training, or skill rather than other factors beyond the  
16 nurse's control. A determination that a deficiency in care is  
17 attributable to a nurse must be based on the extent to which the  
18 nurse's conduct was the result of a deficiency in the nurse's  
19 judgment, knowledge, training, or skill.

20 SECTION 12. Subchapter B, Chapter 241, Health and Safety  
21 Code, is amended by adding Section 241.0264 to read as follows:

22 Sec. 241.0264. POLICIES RELATING TO WORKPLACE SAFETY (a)  
23 Hospitals shall adopt policies and procedures relating to the work  
24 environment for nurses to:

25 (1) improve workplace safety to reduce risk of  
26 violence, injury and occupational illness; and

27 (2) improve the use of ergonomic principles and

1 ergonomically designed devices to reduce injury and fatigue.

2 (b) In developing policies, hospital shall address:

3 (1) evaluating new products and technology  
4 incorporating ergonomic principles;

5 (2) controlling access to areas with high risk of  
6 violence;

7 (3) educating staff in application of ergonomic  
8 practices;

9 (4) conducting workplace audits to identify areas of  
10 risks and recommended ways to reduce risks; and

11 (5) reporting of crimes against hospital personnel to  
12 appropriate law enforcement agencies.

13 SECTION 13. This Act takes effect immediately if it  
14 receives a vote of two-thirds of all the members elected to each  
15 house, as provided by Section 39, Article III, Texas Constitution.  
16 If this Act does not receive the vote necessary for immediate  
17 effect, this Act takes effect September 1, 2003.