

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:

(1) the education requirements of this chapter unless the program includes alternate but substantially equivalent requirements; or

1           (2) the mandatory reporting requirements unless the  
2 program:

3                   (A) is designed to evaluate the efficiency of  
4 alternative reporting methods; and

5                   (B) provides consumers adequate protection from  
6 registered nurses whose continued practice is a threat to public  
7 safety.

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

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

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

20                   (1) provide for the remediation of the deficiencies of  
21 a registered nurse who has knowledge or skill deficiencies that  
22 unless corrected may result in an unreasonable risk to public  
23 safety;

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

26                   (3) require reporting to the board of a registered  
27 nurse:

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

4           (B) whose incompetence in the practice of  
5 professional nursing would pose a continued risk of harm to the  
6 public; or

7           (C) whose error contributed to a patient death or  
8 serious patient injury; or

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

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

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

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

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

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

24                   (1) the title "nurse"; or

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

27           SECTION 3. The heading to Section 301.303, Occupations

1 Code, is amended to read as follows:

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

3 SECTION 4. Subsections (a) and (d), Section 301.303,  
4 Occupations Code, are amended to read as follows:

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

11 (1) completion of targeted continuing education  
12 programs; and

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

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

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

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

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

25 (B) certified by Medicare; or

26 (C) maintained or operated by the federal  
27 government or the state.

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

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

9 (1) the registered nurse designation;

10 (2) the nurse's name, certifications, academic  
11 degrees, or practice position;

12 (3) the name of the employing facility or agency, or  
13 other employer;

14 (4) a picture of the nurse; or

15 (5) any other information authorized by the board.

16 (c) The board may adopt rules establishing specifications  
17 for the insignia.

18 SECTION 6. Section 301.401, Occupations Code, is amended to  
19 read as follows:

20 Sec. 301.401. GROUNDS FOR REPORTING REGISTERED NURSE.

21 (a) Except as provided by Subsection (b), the [~~The~~] following are  
22 grounds for reporting a registered nurse under Section 301.402,  
23 301.403, 301.405, or 301.407:

24 (1) unnecessary or likely exposure by the registered  
25 nurse of a patient or other person to a risk of harm;

26 (2) unprofessional conduct by the registered nurse;

27 (3) failure by the registered nurse to adequately care

1 for a patient;

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

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

6 (b) Subsection (a) does not apply to a minor incident, as  
7 defined by Section 301.419, if the incident is not required to be  
8 reported under a rule adopted under Section 301.419.

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

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

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

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

25 (1) the title "nurse aide," "nurse assistant," or  
26 "nurse technician"; or

27 (2) any other similar title.

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

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

12 SECTION 10. Section 303.005, Occupations Code, is amended  
13 by amending Subsections (a) through (d) and (f) and adding  
14 Subsection (h) to read as follows:

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

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

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

3 (1) may not be disciplined or discriminated against  
4 for making the request;

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

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

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

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

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

20 (h) A person is not required to provide a peer review  
21 determination under this section for a request made by:

22 (1) a registered nurse, unless the person regularly  
23 employs, hires, or otherwise contracts for the services of at least  
24 five registered nurses; or

25 (2) a licensed vocational nurse, unless the person  
26 regularly employs, hires, or otherwise contracts for the services  
27 of at least five licensed vocational nurses.

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

3 (f) If a peer review committee determines that a nurse has  
4 not engaged in conduct required to be reported to the nurse's  
5 licensing board, a member of the peer review committee whose  
6 knowledge of the nurse's conduct was acquired only through the peer  
7 review may not report that nurse to the licensing board for that  
8 conduct. A committee member is not prohibited from reporting:

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

11 (2) the peer review committee to the licensing board,  
12 if the member believes the committee made its determination in bad  
13 faith.

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

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

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

27 Sec. 241.029. POLICIES AND PROCEDURES RELATING TO WORKPLACE

1 SAFETY. (a) The governing body of a hospital shall adopt policies  
2 and procedures related to the work environment for nurses to:

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

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

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

9 (1) evaluating new products and technology that  
10 incorporate ergonomic principles;

11 (2) educating nurses in the application of ergonomic  
12 practices;

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

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

18 (5) promptly reporting crimes committed against  
19 nurses to appropriate law enforcement agencies.

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

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

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 718 passed the Senate on April 22, 2003, by the following vote: Yeas 31, Nays 0; May 9, 2003, Senate refused to concur in House amendment and requested appointment of Conference Committee; May 22, 2003, House granted request of the Senate; May 29, 2003, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

I hereby certify that S.B. No. 718 passed the House, with amendment, on April 30, 2003, by the following vote: Yeas 138, Nays 0, two present not voting; May 22, 2003, House granted request of the Senate for appointment of Conference Committee; May 26, 2003, House adopted Conference Committee Report by the following vote: Yeas 139, Nays 0, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor