

By: Madla

S.B. No. 718

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of nursing.

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 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 any rule adopted under this chapter, including a rule related to mandatory reporting requirements under Subchapter I or a rule adopted under 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 registered nurses whose continued practice is a threat to public

1 safety.

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

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

7 (b) If the board grants an exception to the mandatory  
8 reporting requirements of Subchapter I, the board may require that  
9 the program:

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

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

16 (3) require reporting to the board of a registered  
17 nurse:

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

21 (B) whose incompetence in the practice of  
22 professional nursing would pose a continued risk of harm to the  
23 public; or

24 (C) whose error contributed to a patient death or  
25 serious patient injury; or

26 (4) provide for a nursing peer review committee to  
27 review whether a registered nurse is appropriate for remediation

1 under Subdivision (1).

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

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

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

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

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

14 (1) the title "nurse"; or

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

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

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

25 (1) the registered nurse designation; and

26 (2) the nurse's name, certifications, academic  
27 degrees, or practice position.

1        (c) The board may adopt rules establishing specifications  
2 for the insignia.

3        SECTION 4. Section 301.401, Occupations Code, is amended to  
4 read as follows:

5        Sec. 301.401. GROUNDS FOR REPORTING REGISTERED NURSE. (a)  
6 Except as provided by Subsection (b), the ~~[The]~~ following are  
7 grounds for reporting a registered nurse under Section 301.402,  
8 301.403, 301.405, or 301.407:

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

11            (2) unprofessional conduct by the registered nurse;

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

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

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

18        (b) Subsection (a) does not apply to a minor incident, as  
19 defined by Section 301.419, if the board adopts a rule excluding the  
20 minor incident from the reporting requirements of this section.

21        SECTION 5. Section 301.402, Occupations Code, is amended by  
22 adding Subsection (f) to read as follows:

23        (f) A registered nurse may report to the nurse's employer or  
24 another entity at which the nurse is authorized to practice any  
25 situation that the nurse has reasonable cause to believe exposes a  
26 patient to substantial risk of harm as a result of a failure to  
27 provide patient care that conforms to minimum standards of

1 acceptable and prevailing professional nursing practice.

2 SECTION 6. Subchapter J, Chapter 301, Occupations Code, is  
3 amended by adding Section 301.4515 to read as follows:

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

8 (1) the title "nurse aide," "nurse assistant," or  
9 "nurse technician"; or

10 (2) any other similar title.

11 SECTION 7. Section 301.457, Occupations Code, is amended by  
12 adding Subsection (f) to read as follows:

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

22 SECTION 8. Sections 303.005(a), (b), (c), (d), and (f),  
23 Occupations Code, are amended to read as follows:

24 (a) In this section, "duty to a patient" means conduct  
25 required by standards of practice or professional conduct adopted  
26 by the board for registered nurses or the Board of Vocational Nurse  
27 Examiners for licensed vocational nurses. The term includes

1 administrative decisions directly affecting a [~~registered~~] nurse's  
2 ability to comply with that duty.

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

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

12 (1) may not be disciplined or discriminated against  
13 for making the request;

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

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

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

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

27 (f) A [~~registered~~] nurse's rights under this section may not

1 be nullified by a contract.

2 SECTION 9. Section 303.006, Occupations Code, is amended by  
3 adding Subsection (f) to read as follows:

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

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

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

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

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

26 SECTION 11. This Act takes effect immediately if it  
27 receives a vote of two-thirds of all the members elected to each

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1 house, as provided by Section 39, Article III, Texas Constitution.  
2 If this Act does not receive the vote necessary for immediate  
3 effect, this Act takes effect September 1, 2003.