

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1000
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The 78th Legislature, Regular Session, 2003, passed legislation combining the boards and the licensing acts for registered nurses (RN) and licensed vocational nurses (LVN), but other 2003 legislation amending the Nursing Practice Act (NPA) in some cases did not include LVNs, and, in other cases, amended the same provision differently.

C.S.S.B. 1000 reconciles such differences and addresses several other issues relating to the practice and regulation of nursing. C.S.S.B. 1000 clarifies confidentiality of certain information collected by the Nursing Workforce Data Section. The bill adds more detail to the definition of "vocational nursing" and changes format to parallel the definition of "professional nursing." C.S.S.B. 1000 clarifies that a nurse's conduct is reportable to the Board of Nurse Examiners only when the conduct creates an unnecessary risk of harm to a patient. Further, C.S.S.B. 1000 clarifies the relationship between employer reporting and the conducting of a nursing peer review when a terminated nurse elects not to participate in peer review and certain provisions relating to nursing peer review. Finally, C.S.S.B. 1000 makes permanent the Nurse Licensure Compact and repeals outdated provisions of the NPA.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

[While statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

SECTION 1. Amends Sections 105.002(b) and (c), Health and Safety Code, as follows:

- (b) Deletes existing text requiring the statewide health coordinating council to establish a nursing resource section using fees collected under Section 302.153(d).
- (c) Makes conforming changes.

SECTION 2. Amends Section 105.003(e), Health and Safety Code, to provide that data received under this section by the nursing resource section established under Section 105.002, rather than the Texas Department of Health (TDH) under this section, that contains information identifying specific patients, rather than persons, or health care facilities is confidential and is prohibited from being released unless all identifying information is removed.

SECTION 3. Amends Sections 301.002(2) and (5), Occupations Code, to redefine "professional nursing" and "vocational nursing."

SECTION 4. Amends Section 301.155(c), Occupations Code, to make a distinction between the surcharge to the license renewal fee charged to a registered nurse and a vocational nurse. Updates reference to the Texas Department of Health as the Department of State Health Services. Makes nonsubstantive changes.

SECTION 5. Amends Sections 301.251(c) and (d), Occupations Code, as follows:

- (c) Deletes existing text distinguishing between professional and vocational nurses. Makes a nonsubstantive change.
- (d) Deletes existing text distinguishing between professional and vocational nurses.

SECTION 6. Reenacts and amends Section 301.351, Occupations Code, as amended by Section 1.027, Chapter 553, Acts of the 78th Legislature, Regular Session, 2003, and Section 5, Chapter 876, Acts of the 78th Legislature, Regular Session, 2003, to delete existing text distinguishing between professional and vocational nurses. Prohibits a nurses insignia from containing information other than the registered or vocational nurse designation, in addition to other required information. Makes a nonsubstantive change.

SECTION 7. Amends Section 301.352, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (e), as follows:

- (a) Prohibits a person from suspending, terminating, or otherwise disciplining or discriminating against a nurse who refuses to engage in an act or omission relating to patient care that would constitute grounds for reporting the nurse to the Board of Nurse Examiners (board) under Subchapter I (Duty to Report Violation), that constitutes a minor incident, or that violates this chapter or a board rule if the nurse notifies the person at the time of the refusal that the reason for refusing is that the act or omission constitutes grounds for reporting the nurse to the board or is a violation of this chapter or a rule of the board.
- (b) Makes conforming changes.
- (e) Defines "minor incident."

SECTION 8. Amends Subchapter H, Chapter 301, Occupations Code, by adding Section 301.353, as follows:

Sec. 301.353. SUPERVISION OF VOCATIONAL NURSE. Requires the practice of vocational nursing to be performed under the supervision of a registered nurse, physician, physician assistant, podiatrist, or dentist.

SECTION 9. Amends Section 301.401(a), Occupations Code, to make conforming and nonsubstantive changes.

SECTION 10. Amends Sections 301.402(c) and (f), Occupations Code, to authorize a nurse, in a written, signed report to the appropriate licensing board or accrediting body, to report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to minimum standards of acceptable and prevailing professional, rather than nursing, practice, for a report made regarding a practitioner or statutory, regulatory, or accreditation standards, for a report made regarding an agency or facility. Makes conforming and nonsubstantive changes.

SECTION 11. Amends Section 301.403, Occupations Code, to include a description of the ground for reporting a nurse and the extent to which any deficiency in care provided by the reported nurse was the result of a factor beyond the nurse's control rather than a deficiency in the nurse's judgment, knowledge, training, or skill amongst the information that is required to be contained in a written, signed report filed with the board. Makes nonsubstantive changes.

SECTION 12. Amends Section 301.405, Occupations Code, by amending Subsections (b), (c), (d), (e), and (g), and adding Subsection (h), as follows:

- (b) Includes the ground for reporting a nurse that preceded the disciplinary action amongst the information that is required to be contained in a report filed with the board regarding a nurse, or a staffing agency nurse, who has been terminated, suspended for more than seven days, or has received substantive disciplinary action.

(c) Deletes existing text regarding rebuttal information that a nurse must submit to a nursing peer review committee

(d) Requires the peer review committee to submit a report to the board that contains the information required by Section 301.403. Provides that a report is not required under this subsection if the nurse was terminated, voluntarily or involuntarily, and elected not to participate in peer review. Deletes existing text requiring the review committee to determine whether a ground exists for reporting the nurse undergoing review.

(e) Provides that the requirement under Subsection (c) that a nursing peer review committee review the nurse and the incident does not subject a person's administrative decision to discipline a nurse to the peer review process or prevent a person from taking disciplinary action before review by the peer review committee is conducted. Deletes existing text relating to a report that is required to be reviewed.

(g) Deletes existing text providing that a person is not required to develop a written plan for peer review of a vocational nurse, unless the person regularly contracts with at least five vocational nurses.

(h) Requires a plan developed under Subsection (c) to provide that a nurse who has been terminated, either voluntarily or involuntarily, is required to have the opportunity to participate in peer review. Provides that, if the nurse elects to not participate in a review, the nurse waives any right to procedural due process under Section 303.002 (General Provisions Regarding Peer Review).

SECTION 13. Amends Section 301.417(b), Occupations Code, to authorize the board to disclose the information to the same extent that the board may disclose information relating to a complaint under Section 301.466 (Confidentiality). Deletes existing text authorizing the board to disclose certain information in connection with an investigation or disciplinary action against a license holder.

SECTION 14. Amends Section 301.603, Occupations Code, by deleting text providing that rules adopted by the board under Section 301.602 (Rules) do not apply to an outpatient setting in which only anxiolytics and analgesics are used and only in doses that do not have the probability of placing the patient at risk for loss of the patient's life-preserving protective reflexes. Makes nonsubstantive changes.

SECTION 15. Amends Sections 303.003(a), (b), and (c), Occupations Code, to delete text distinguishing between registered and vocational nurses who compose nursing peer review committees. Requires a nursing peer review committee that conducts a peer review that involves the practice of professional nursing to have registered nurses as two-thirds, rather than four-fifths, of its members and authorizes only registered nurses to be voting members.

SECTION 16. Amends Sections 303.005(a), (b), (c), and (h), Occupations Code, to make conforming and nonsubstantive changes.

SECTION 17. Amends Section 303.008, Occupations Code, to require a nursing peer review committee, if the committee makes an adverse finding against a nurse, to provide the nurse with a detailed description of the basis of its finding. Deletes existing text relating to information disclosed by a peer review committee that could result in disciplinary action against a nurse. Makes nonsubstantive changes.

SECTION 18. Repealer: Sections 301.005 (Occupations Tax and Fee Exemption), 301.417(c) (relating to disclosure of information), and 304.010 (Expiration of Compact), Occupations Code.

SECTION 19. Makes application of 301.155(c), Occupations Code, as amended by this Act, prospective.

SECTION 20. Makes application of the changes in law made by this Act regarding reporting requirements prospective.

SECTION 21. Makes application of Sections 303.003 and 303.008, Occupations Code, as amended by this Act, prospective.

SECTION 22. Provides that, to the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 23. Effective date: upon passage or September 1, 2005.