

By: Allen of Dallas

H.B. No. 1366

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. Section 301.161, Occupations Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) The board may establish a criminal investigations unit to investigate suspected criminal acts relating to the practice of nursing as authorized by this chapter.

(e) The board may assist federal, state, or local law enforcement agencies in the investigation and prosecution of crimes related to the practice of nursing.

SECTION 2. Section 301.301(b), Occupations Code, is amended to read as follows:

(b) A person may renew an unexpired license issued under this chapter on payment of the required renewal fee, payment of any costs assessed under Section 301.461, and compliance with any other renewal requirements adopted by the board.

SECTION 3. Section 301.452(b), Occupations Code, is amended to read as follows:

(b) A person is subject to denial of a license or to disciplinary action under this subchapter for:

(1) a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;

1           (2) fraud or deceit in procuring or attempting to  
2 procure a license to practice professional nursing or vocational  
3 nursing;

4           (3) a conviction for, or placement on deferred  
5 adjudication community supervision or deferred disposition for, a  
6 felony or for a misdemeanor involving moral turpitude;

7           (4) conduct that results in the revocation of  
8 probation imposed because of conviction for a felony or for a  
9 misdemeanor involving moral turpitude;

10          (5) use of a nursing license, diploma, or permit, or  
11 the transcript of such a document, that has been fraudulently  
12 purchased, issued, counterfeited, or materially altered;

13          (6) impersonating or acting as a proxy for another  
14 person in the licensing examination required under Section 301.253  
15 or 301.255;

16          (7) directly or indirectly aiding or abetting an  
17 unlicensed person in connection with the unauthorized practice of  
18 nursing;

19          (8) revocation, suspension, or denial of, or any other  
20 action relating to, the person's license or privilege to practice  
21 nursing in another jurisdiction;

22          (9) intemperate use of alcohol or drugs that the board  
23 determines endangers or could endanger a patient;

24          (10) unprofessional or dishonorable conduct that, in  
25 the board's opinion, is likely to deceive, defraud, or injure a  
26 patient or the public;

27          (11) adjudication of mental incompetency;

(12) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or

(13) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the board's opinion, exposes a patient or other person unnecessarily to risk of harm.

SECTION 4. Subchapter J, Chapter 301, Occupations Code, is amended by adding Section 301.4535 to read as follows:

Sec. 301.4535. REQUIRED SUSPENSION, REVOCATION, OR REFUSAL OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a nurse's license or refuse to issue a license to an applicant on proof that the nurse or applicant has been initially convicted of:

(1) murder under Section 19.02, Penal Code, capital murder under Section 19.03, Penal Code, or manslaughter under Section 19.04, Penal Code;

(2) kidnapping or unlawful restraint under Chapter 20, Penal Code, and the offense was punished as a felony or state jail felony;

(3) sexual assault under Section 22.011, Penal Code;

(4) aggravated sexual assault under Section 22.021, Penal Code;

(5) indecency with a child under Section 21.11, Penal Code;

(6) aggravated assault under Section 22.02, Penal Code;

(7) intentionally, knowingly, or recklessly injuring

1 a child, elderly individual, or disabled individual under Section  
2 22.04, Penal Code;

3 (8) intentionally, knowingly, or recklessly  
4 abandoning or endangering a child under Section 22.041, Penal Code;

5 (9) aiding suicide under Section 22.08, Penal Code,  
6 and the offense was punished as a state jail felony;

7 (10) an offense under Section 25.07, Penal Code,  
8 punished as a felony;

9 (11) an offense under Section 25.071, Penal Code,  
10 punished as a felony;

11 (12) an agreement to abduct a child from custody under  
12 Section 25.031, Penal Code;

13 (13) the sale or purchase of a child under Section  
14 25.08, Penal Code;

15 (14) robbery under Section 29.02, Penal Code;

16 (15) aggravated robbery under Section 29.03, Penal  
17 Code;

18 (16) an offense for which a defendant is required to  
19 register as a sex offender under Chapter 62, Code of Criminal  
20 Procedure; or

21 (17) an offense under the law of another state,  
22 federal law, or the Uniform Code of Military Justice that contains  
23 elements that are substantially similar to the elements of an  
24 offense listed in this subsection.

25 (b) On final conviction or a plea of guilty or nolo  
26 contendere for an offense listed in Subsection (a), the board, as  
27 appropriate, may not issue a license to an applicant, shall refuse

1 to renew a license, or shall revoke a license if the applicant or  
2 license holder did not previously disclose the conviction or plea  
3 and the fifth anniversary of the date the person successfully  
4 completed community supervision or parole has not occurred.

5 (c) A person is not eligible for an initial license or for  
6 reinstatement or endorsement of a license to practice nursing in  
7 this state before the fifth anniversary of the date the person  
8 successfully completed and was dismissed from community  
9 supervision or parole for an offense described by Subsection (a).

10 SECTION 5. Section 301.455, Occupations Code, is amended to  
11 read as follows:

12 Sec. 301.455. TEMPORARY LICENSE SUSPENSION OR  
13 RESTRICTION. (a) The license of a nurse shall be temporarily  
14 suspended or restricted on a determination by a majority of the  
15 board or a three-member committee of board members designated by  
16 the board that, from the evidence or information presented, the  
17 continued practice of the nurse would constitute a continuing and  
18 imminent threat to the public welfare.

19 (b) A license may be temporarily suspended or restricted  
20 under this section without notice or hearing on the complaint if:

21 (1) institution of proceedings for a hearing before  
22 the State Office of Administrative Hearings is initiated  
23 simultaneously with the temporary suspension or determination to  
24 restrict; and

25 (2) a hearing is held as soon as possible under this  
26 chapter and Chapter 2001, Government Code.

27 (c) The State Office of Administrative Hearings shall hold a

1 preliminary hearing not later than the 14th day after the date of  
2 the temporary suspension or restriction to determine whether  
3 probable cause exists that a continuing and imminent threat to the  
4 public welfare exists. The probable cause hearing shall be  
5 conducted as a de novo hearing.

6 (d) A final hearing on the matter shall be held not later  
7 than the 61st day after the date of the temporary suspension or  
8 restriction.

9 SECTION 6. Subchapter H, Chapter 301, Occupations Code, is  
10 amended by adding Section 301.354 to read as follows:

11 Sec. 301.354. NURSE FIRST ASSISTANTS; ASSISTING AT SURGERY  
12 BY OTHER NURSES. (a) In this section, "nurse first assistant"  
13 means a registered nurse who:

14 (1) has completed a nurse first assistant educational  
15 program approved or recognized by an organization recognized by the  
16 board; and

17 (2) is either:

18 (A) certified in perioperative nursing by an  
19 organization recognized by the board; or

20 (B) recognized by the board as an advanced  
21 practice nurse and qualified by education, training, or experience  
22 to perform the tasks involved in perioperative nursing.

23 (b) Unless the person is a nurse first assistant, the person  
24 may not use:

25 (1) the title "nurse first assistant" or "registered  
26 nurse first assistant";

27 (2) the abbreviation "R.N.F.A."; or

1           (3) any other title or abbreviation that implies to  
2 the public that the person is qualified as a nurse first assistant  
3 under this section.

4           (c) A health maintenance organization or an insurer,  
5 including an insurer offering a preferred provider benefit plan,  
6 may not, by contract or any other method, require a physician to use  
7 the services of a nurse first assistant.

8           (d) A nurse who is not a nurse first assistant may assist a  
9 physician, podiatrist, or dentist in the performance of surgery if  
10 the nurse:

11               (1) assists under the direct personal supervision and  
12 in the physical presence of the physician, podiatrist, or dentist;

13               (2) is in the same sterile field as the physician,  
14 podiatrist, or dentist;

15               (3) is employed by:

16                       (A) the physician, podiatrist, or dentist;

17                       (B) a group to which the physician, podiatrist,  
18 or dentist belongs; or

19                       (C) a hospital licensed or owned by the state;  
20 and

21               (4) is qualified by education, training, or experience  
22 to perform the tasks assigned to the nurse.

23           (e) A patient or third-party insurer may not be billed  
24 separately for the services performed by a nurse described by  
25 Subsection (d).

26           (f) A registered nurse must perform circulating duties in  
27 the operating room. In accordance with approved medical staff

1 policies and procedures, a vocational nurse or surgical  
2 technologist may assist in circulating duties under the direct  
3 supervision of the registered nurse.

4 SECTION 7. Sections 301.1525, 301.1526, 301.1527, and  
5 304.010, Occupations Code, are repealed.

6 SECTION 8. (a) The change in law made by this Act by the  
7 amendment of Section 301.301(b), Occupations Code, applies only to  
8 the renewal of a license that expires on or after the effective date  
9 of this Act. The renewal of a license that expires before the  
10 effective date of this Act is governed by the law in effect on the  
11 date the license expired, and the former law is continued in effect  
12 for that purpose.

13 (b) The change in law made by this Act by the enactment of  
14 Section 301.4535, Occupations Code, applies only to a person who is  
15 initially convicted of an offense or placed on deferred  
16 adjudication after a plea of guilty or nolo contendere for an  
17 offense on or after the effective date of this Act. A person  
18 initially convicted of an offense or placed on deferred  
19 adjudication before that date is governed by the law in effect on  
20 the date the conviction or plea occurred, and the former law is  
21 continued in effect for that purpose.

22 (c) The change in law made by this Act by the amendment of  
23 Section 301.455, Occupations Code, applies only to a proceeding  
24 commenced on or after the effective date of this Act. A proceeding  
25 commenced before that date is governed by the law in effect on the  
26 date the proceeding was commenced, and the former law is continued  
27 in effect for that purpose.



1           SECTION 9.   This Act takes effect September 1, 2005.