

By: Allen of Dallas

H.B. No. 1366

Substitute the following for H.B. No. 1366:

By: Truitt

C.S.H.B. No. 1366

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement of 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. Section 304.010, Occupations Code, is repealed.

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

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

26 (c) The change in law made by this Act by the amendment of
27 Section 301.455, Occupations Code, applies only to a proceeding

1 commenced on or after the effective date of this Act. A proceeding
2 commenced before that date is governed by the law in effect on the
3 date the proceeding was commenced, and the former law is continued
4 in effect for that purpose.

5 SECTION 8. This Act takes effect September 1, 2005.