

By: Allen of Dallas

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. Subchapter D, Chapter 301, Occupations Code, is amended by adding Section 301.1611 to read as follows:

Sec. 301.1611. PEACE OFFICERS. (a) The board may commission as a peace officer to enforce this subtitle an employee who has been certified as qualified to be a peace officer by the Commission on Law Enforcement Standards and Education.

(b) An employee commissioned as a peace officer under this section has the powers, privileges, and immunities of a peace officer while carrying out duties as a peace officer under this subtitle, except that the employee may not carry a firearm or make an arrest.

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

4 (2) fraud or deceit in procuring or attempting to
5 procure a license to practice professional nursing or vocational
6 nursing;

7 (3) a conviction for, or placement on deferred
8 adjudication community supervision or deferred disposition for, a
9 felony or for a misdemeanor involving moral turpitude;

10 (4) conduct that results in the revocation of
11 probation imposed because of conviction for a felony or for a
12 misdemeanor involving moral turpitude;

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

16 (6) impersonating or acting as a proxy for another
17 person in the licensing examination required under Section 301.253
18 or 301.255;

19 (7) directly or indirectly aiding or abetting an
20 unlicensed person in connection with the unauthorized practice of
21 nursing;

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

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

27 (10) unprofessional or dishonorable conduct that, in

the board's opinion, is likely to deceive, defraud, or injure a patient or the public;

(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 OR REVOCATION OF LICENSE FOR CERTAIN OFFENSES. (a) The board shall suspend a nurse's license on proof that the nurse has been:

(1) initially convicted of:

(A) a felony;

(B) a misdemeanor under Chapter 22, Penal Code, other than a misdemeanor punishable by fine only;

(C) a misdemeanor on conviction of which a defendant is required to register as a sex offender under Chapter 62, Code of Criminal Procedure;

(D) a misdemeanor under Section 25.07, Penal Code; or

(E) a misdemeanor under Section 25.071, Penal Code; or

(2) subject to an initial finding by the trier of fact

1 of guilt of a felony under:

2 (A) Chapter 481 or 483, Health and Safety Code;

3 (B) Section 485.033, Health and Safety Code; or

4 (C) the Comprehensive Drug Abuse Prevention and
5 Control Act of 1970 (21 U.S.C. Section 801 et seq.).

6 (b) On final conviction for an offense described by
7 Subsection (a), the board shall revoke the nurse's license.

8 SECTION 5. Section 301.455, Occupations Code, is amended to
9 read as follows:

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

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

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

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

25 (c) The State Office of Administrative Hearings shall hold a
26 preliminary hearing not later than the 30th [~~14th~~] day after the
27 date of the temporary suspension or restriction to determine

1 whether probable cause exists that a continuing and imminent threat
2 to the public welfare exists. The probable cause hearing shall be
3 conducted as a de novo hearing.

4 (d) A final hearing on the matter shall be held not later
5 than the 91st [~~61st~~] day after the date of the temporary suspension
6 or restriction.

7 SECTION 6. Section 301.461, Occupations Code, is amended to
8 read as follows:

9 Sec. 301.461. ASSESSMENT OF COSTS. (a) The board may
10 assess a person who is found to have violated this chapter the
11 administrative costs of conducting a hearing to determine the
12 violation.

13 (b) The administrative costs for conducting a hearing under
14 Subsection (a) include the costs incurred by the board for:

15 (1) legal and investigative services paid to the State
16 Office of Administrative Hearings, the attorney general, or other
17 board counsel;

18 (2) a court reporter and witnesses;

19 (3) the reproduction of records;

20 (4) time worked by the staff of the board; and

21 (5) travel and expenses.

22 SECTION 7. Article 2.12, Code of Criminal Procedure, as
23 amended by Chapters 235, 474, and 930, Acts of the 78th Legislature,
24 Regular Session, 2003, is reenacted and amended to read as follows:

25 Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace
26 officers:

27 (1) sheriffs, their deputies, and those reserve

1 deputies who hold a permanent peace officer license issued under
2 Chapter 1701, Occupations Code;

3 (2) constables, deputy constables, and those reserve
4 deputy constables who hold a permanent peace officer license issued
5 under Chapter 1701, Occupations Code;

6 (3) marshals or police officers of an incorporated
7 city, town, or village, and those reserve municipal police officers
8 who hold a permanent peace officer license issued under Chapter
9 1701, Occupations Code;

10 (4) rangers and officers commissioned by the Public
11 Safety Commission and the Director of the Department of Public
12 Safety;

13 (5) investigators of the district attorneys', criminal
14 district attorneys', and county attorneys' offices;

15 (6) law enforcement agents of the Texas Alcoholic
16 Beverage Commission;

17 (7) each member of an arson investigating unit
18 commissioned by a city, a county, or the state;

19 (8) officers commissioned under Section 37.081,
20 Education Code, or Subchapter E, Chapter 51, Education Code;

21 (9) officers commissioned by the General Services
22 Commission;

23 (10) law enforcement officers commissioned by the
24 Parks and Wildlife Commission;

25 (11) airport police officers commissioned by a city
26 with a population of more than 1.18 million that operates an airport
27 that serves commercial air carriers;

1 (12) airport security personnel commissioned as peace
2 officers by the governing body of any political subdivision of this
3 state, other than a city described by Subdivision (11), that
4 operates an airport that serves commercial air carriers;

5 (13) municipal park and recreational patrolmen and
6 security officers;

7 (14) security officers and investigators commissioned
8 as peace officers by the comptroller;

9 (15) officers commissioned by a water control and
10 improvement district under Section 49.216, Water Code;

11 (16) officers commissioned by a board of trustees
12 under Chapter 54, Transportation Code;

13 (17) investigators commissioned by the Texas State
14 Board of Medical Examiners;

15 (18) officers commissioned by the board of managers of
16 the Dallas County Hospital District, the Tarrant County Hospital
17 District, or the Bexar County Hospital District under Section
18 281.057, Health and Safety Code;

19 (19) county park rangers commissioned under
20 Subchapter E, Chapter 351, Local Government Code;

21 (20) investigators employed by the Texas Racing
22 Commission;

23 (21) officers commissioned under Chapter 554,
24 Occupations Code;

25 (22) officers commissioned by the governing body of a
26 metropolitan rapid transit authority under Section 451.108,
27 Transportation Code, or by a regional transportation authority

1 under Section 452.110, Transportation Code;

2 (23) investigators commissioned by the attorney
3 general under Section 402.009, Government Code;

4 (24) security officers and investigators commissioned
5 as peace officers under Chapter 466, Government Code;

6 (25) an officer employed by the Texas Department of
7 Health under Section 431.2471, Health and Safety Code;

8 (26) officers appointed by an appellate court under
9 Subchapter F, Chapter 53, Government Code;

10 (27) officers commissioned by the state fire marshal
11 under Chapter 417, Government Code;

12 (28) an investigator commissioned by the commissioner
13 of insurance under Article 1.10D, Insurance Code;

14 (29) apprehension specialists commissioned by the
15 Texas Youth Commission as officers under Section 61.0931, Human
16 Resources Code;

17 (30) officers appointed by the executive director of
18 the Texas Department of Criminal Justice under Section 493.019,
19 Government Code;

20 (31) investigators commissioned by the Commission on
21 Law Enforcement Officer Standards and Education under Section
22 1701.160, Occupations Code;

23 (32) commission investigators commissioned by the
24 Texas Commission on Private Security under Section 1702.061(f),
25 Occupations Code;

26 (33) the fire marshal[7] and any officers, inspectors,
27 or investigators commissioned by an emergency services district [~~to~~

1 ~~assist that fire marshal,~~ under ~~[Subchapter F,~~ Chapter 775,
2 Health and Safety Code; ~~and]~~

3 (34) officers commissioned by the State Board of
4 Dental Examiners under Section 254.013, Occupations Code, subject
5 to the limitations imposed by that section; and

6 (35) officers commissioned by the Board of Nurse
7 Examiners under Section 301.1611, Occupations Code.

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

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