

By: McReynolds

H.B. No. 3100

Substitute the following for H.B. No. 3100:

By: Truitt

C.S.H.B. No. 3100

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the practice of nursing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 105.002(b) and (c), Health and Safety Code, are amended to read as follows:

(b) In conjunction with the committee formed under Section 104.0155, to avoid duplication of effort, and to the extent funding is available through fees collected under Section ~~[Sections]~~ 301.155(c) ~~[and 302.153(d)]~~, Occupations Code, the council shall establish a nursing resource section within the center for the collection and analysis of educational and employment trends for nurses in this state.

(c) If the nursing resource section established under Subsection (b) is funded from surcharges collected under Section ~~[Sections]~~ 301.155(c) ~~[and 302.153(d)]~~, Occupations Code, the council shall provide the Board of Nurse Examiners ~~[and the Board of Vocational Nurse Examiners, as applicable]~~ with an annual accounting of the money received from the board ~~[those boards]~~. The council may expend a reasonable amount of the money to pay administrative costs of maintaining the nursing resource section.

SECTION 2. Section 105.003(e), Health and Safety Code, is amended to read as follows:

(e) Data received under this section by the nursing resource section established under Section 105.002 ~~[department under this~~

1 ~~section~~] that contains information identifying specific patients
2 [~~persons~~] or health care facilities is confidential, is not subject
3 to disclosure under Chapter 552, Government Code, and may not be
4 released unless all identifying information is removed.

5 SECTION 3. Sections 301.002(2) and (5), Occupations Code,
6 are amended to read as follows:

7 (2) "Professional nursing" means the performance [~~for~~
8 ~~compensation~~] of an act that requires substantial specialized
9 judgment and skill, the proper performance of which is based on
10 knowledge and application of the principles of biological,
11 physical, and social science as acquired by a completed course in an
12 approved school of professional nursing. The term does not include
13 acts of medical diagnosis or the prescription of therapeutic or
14 corrective measures. Professional nursing involves:

15 (A) the observation, assessment, intervention,
16 evaluation, rehabilitation, care and counsel, or health teachings
17 of a person who is ill, injured, infirm, or experiencing a change in
18 normal health processes;

19 (B) the maintenance of health or prevention of
20 illness;

21 (C) the administration of a medication or
22 treatment as ordered by a physician, podiatrist, or dentist;

23 (D) the supervision or teaching of nursing;

24 (E) the administration, supervision, and
25 evaluation of nursing practices, policies, and procedures;

26 (F) the requesting, receiving, signing for, and
27 distribution of prescription drug samples to patients at sites in

1 which a registered nurse is authorized to sign prescription drug
2 orders as provided by Subchapter B, Chapter 157; ~~and~~

3 (G) the performance of an act delegated by a
4 physician under Section 157.052, 157.053, 157.054, 157.0541,
5 157.0542, 157.058, or 157.059; and

6 (H) the development of the nursing care plan.

7 (5) "Vocational nursing" means a directed scope of
8 nursing practice, including the performance of an act that requires
9 specialized judgment and skill, the proper performance of which is
10 based on knowledge and application of the principles of biological,
11 physical, and social science as acquired by a completed course in an
12 approved school of vocational nursing. The term does not include
13 acts of medical diagnosis or the prescription of therapeutic or
14 corrective measures. Vocational nursing involves:

15 (A) collecting data and performing focused
16 nursing assessments of the health status of an individual;

17 (B) participating in the planning of the nursing
18 care needs of an individual;

19 (C) participating in the development and
20 modification of the nursing care plan;

21 (D) participating in health teaching and
22 counseling to promote, attain, and maintain the optimum health
23 level of an individual;

24 (E) assisting in the evaluation of an
25 individual's response to a nursing intervention and the
26 identification of an individual's needs; and

27 (F) engaging in other acts that require education

1 and training, as prescribed by board rules and policies,
2 commensurate with the nurse's experience, continuing education,
3 and demonstrated competency~~[, other than professional nursing,~~
4 ~~that generally requires experience and education in biological,~~
5 ~~physical, and social sciences sufficient to qualify as a licensed~~
6 ~~vocational nurse]~~.

7 SECTION 4. Section 301.155(c), Occupations Code, is amended
8 to read as follows:

9 (c) The board shall assess a \$3 surcharge for a registered
10 nurse and a \$2 surcharge for a vocational nurse to the fee
11 established by the board under Subsection (a) for a license holder
12 to renew a license under this chapter. The board may use nine cents
13 of the registered nurse surcharge and six cents of the vocational
14 nurse surcharge to cover the administrative costs of collecting and
15 depositing the surcharge. The board quarterly shall transmit the
16 remainder ~~[\$2.91]~~ of each ~~[the]~~ surcharge to the ~~[Texas]~~ Department
17 of State Health Services to be used only to implement the nursing
18 resource section under Section 105.002, Health and Safety Code.
19 The board is not required to collect the surcharge if the board
20 determines the funds collected are not appropriated for the purpose
21 of funding the nursing resource section.

22 SECTION 5. Sections 301.251(c) and (d), Occupations Code,
23 are amended to read as follows:

24 (c) This section does not apply to a person entitled to
25 practice ~~[professional]~~ nursing ~~[or vocational nursing]~~ in this
26 state under Chapter 304~~[, as added by Chapter 1420, Acts of the 77th~~
27 ~~Legislature, Regular Session, 2001]~~.

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

(1) the title "nurse"; or

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

SECTION 6. 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, is reenacted and amended to read as follows:

Sec. 301.351. DESIGNATIONS. (a) A person who holds a license as a registered nurse under this chapter:

(1) is referred to as a registered nurse; and

(2) may use the abbreviation "R.N."

(b) A person who holds a license as a vocational nurse under this chapter:

(1) is referred to as a licensed vocational nurse or vocational nurse; and

(2) may use the abbreviation "L.V.N." or "V.N."

(c) While interacting with the public in a [~~professional~~] nursing role, each [~~licensed registered~~] nurse shall wear a clearly legible insignia identifying the nurse as a registered or vocational nurse [~~and each licensed vocational nurse shall wear an insignia identifying the nurse as a vocational nurse~~]. The insignia may not contain information other than:

(1) the registered or vocational nurse designation;

1 (2) the nurse's name, certifications, academic
2 degrees, or practice position;

3 (3) the name of the employing facility or agency, or
4 other employer;

5 (4) a picture of the nurse; or

6 (5) any other information authorized by the board.

7 (d) [~~(e)~~] The board may adopt rules establishing
8 specifications for the insignia.

9 SECTION 7. Section 301.352, Occupations Code, is amended by
10 amending Subsections (a) and (b) and adding Subsection (e) to read
11 as follows:

12 (a) A person may not suspend, terminate, or otherwise
13 discipline or discriminate against a nurse who refuses to engage in
14 an act or omission relating to patient care that would constitute
15 grounds for reporting the nurse to the board under Subchapter I,
16 that constitutes a minor incident, or that violates this chapter or
17 a board rule if the nurse notifies the person at the time of the
18 refusal that the reason for refusing is that the act or omission:

19 (1) constitutes grounds for reporting the nurse to the
20 board; or

21 (2) is a violation of this chapter or a rule of the
22 board.

23 (b) An act by a person under Subsection (a) does not
24 constitute a violation of this section if a nursing peer review
25 committee under Chapter 303 determines:

26 (1) that the act or omission the nurse refused to
27 engage in was;

1 (A) not conduct reportable to the board under
2 Section 301.403;

3 (B) a minor incident; or

4 (C) a violation of this chapter or a board rule;

5 or

6 (2) that:

7 (A) the act or omission in which the nurse
8 refused to engage was conduct reportable to the board, a minor
9 incident, or a violation of this chapter or a board rule; and

10 (B) the person:

11 (i) rescinds any disciplinary or
12 discriminatory action taken against the nurse;

13 (ii) compensates the nurse for lost wages;
14 and

15 (iii) restores to the nurse any lost
16 benefits.

17 (e) In this section, "minor incident" has the meaning
18 assigned by Section 301.419.

19 SECTION 8. Subchapter H, Chapter 301, Occupations Code, is
20 amended by adding Section 301.353 to read as follows:

21 Sec. 301.353. SUPERVISION OF VOCATIONAL NURSE. The
22 practice of vocational nursing must be performed under the
23 supervision of a registered nurse, physician, physician assistant,
24 podiatrist, or dentist.

25 SECTION 9. Section 301.401(a), Occupations Code, is amended
26 to read as follows:

27 (a) Except as provided by Subsection (b), the following are

1 grounds for reporting a nurse under Section 301.402, 301.403,
2 301.405, or 301.407:

3 (1) ~~[unnecessary or]~~ likely exposure by the nurse of a
4 patient or other person to an unnecessary ~~[a]~~ risk of harm;

5 (2) unprofessional conduct by the nurse;

6 (3) failure by the nurse to adequately care for a
7 patient;

8 (4) failure by the nurse to conform to the minimum
9 standards of acceptable ~~[professional]~~ nursing practice; or

10 (5) impairment or likely impairment of the nurse's
11 practice by chemical dependency.

12 SECTION 10. Sections 301.402(c) and (f), Occupations Code,
13 are amended to read as follows:

14 (c) In a written, signed report to the appropriate licensing
15 board or accrediting body, a nurse may report a licensed health care
16 practitioner, agency, or facility that the nurse has reasonable
17 cause to believe has exposed a patient to substantial risk of harm
18 as a result of failing to provide patient care that conforms to the:

19 (1) minimum standards of acceptable and prevailing
20 professional ~~[nursing]~~ practice, for a report made regarding a
21 practitioner; or

22 (2) statutory, regulatory, or accreditation
23 standards, for a report made regarding an agency or facility.

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

1 provide patient care that conforms to minimum standards of
2 acceptable and prevailing professional [~~nursing~~] practice or to
3 statutory, regulatory, or accreditation standards. For purposes of
4 this subsection, the employer or entity includes an employee or
5 agent of the employer or entity.

6 SECTION 11. Section 301.403, Occupations Code, is amended
7 to read as follows:

8 Sec. 301.403. DUTY OF PEER REVIEW COMMITTEE TO REPORT. A
9 nursing peer review committee operating under Chapter 303 that has
10 a ground for reporting a nurse under Section 301.401 shall file with
11 the board a written, signed report that includes:

12 (1) the identity of the nurse;

13 (2) a description of any corrective action taken
14 against the nurse;

15 (3) a statement whether the nursing peer review
16 committee recommends that the board take formal disciplinary action
17 against the nurse; [~~and~~]

18 (4) a description of the ground for reporting;

19 (5) the extent to which any deficiency in care
20 provided by the reported nurse was the result of a factor beyond the
21 nurse's control rather than a deficiency in the nurse's judgment,
22 knowledge, training, or skill; and

23 (6) any additional information the board requires.

24 SECTION 12. Section 301.405, Occupations Code, is amended
25 by amending Subsections (b), (c), (d), (e), and (g), and adding
26 Subsection (h) to read as follows:

27 (b) A person that terminates, suspends for more than seven

1 days, or takes other substantive disciplinary action, as defined by
2 the board, against a nurse, or a substantially equivalent action
3 against a nurse who is a staffing agency nurse, because a ground
4 under Section 301.401 exists to report the nurse shall report in
5 writing to the board:

6 (1) the identity of the nurse;

7 (2) the ground that preceded the termination,
8 suspension, or other substantive disciplinary action or
9 substantially equivalent action; and

10 (3) any additional information the board requires.

11 (c) Except as provided by Subsection (g), each person
12 subject to this section that regularly employs, hires, or otherwise
13 contracts for the services of 10 or more nurses shall develop a
14 written plan for identifying and reporting a nurse [~~in its service~~
15 ~~against whom a ground~~] under Section 301.401(a) [~~301.401 exists~~].
16 The plan must provide [~~include an appropriate process~~] for the
17 review of the nurse and the incident by a nursing peer review
18 committee established and operated under Chapter 303 [~~of any~~
19 ~~incident reportable under this section and for the affected nurse~~
20 ~~to submit rebuttal information to that committee~~]. Review by the
21 committee is only advisory, but is required, even if the nurse is
22 voluntarily or involuntarily terminated.

23 (d) The nursing [~~review by the~~] peer review committee shall
24 submit a report to the board that contains the information required
25 by Section 301.403. A report is not required under this subsection
26 if the nurse was terminated, either voluntarily or involuntarily,
27 and elected not to participate in peer review [~~must include a~~

1 ~~determination as to whether a ground under Section 301.401 exists~~
2 ~~to report the nurse undergoing review. The peer review committee's~~
3 ~~determination must be included in the report made to the board under~~
4 ~~Subsection (b)]~~.

5 (e) The requirement under Subsection (c) that a ~~[report to~~
6 ~~the board be reviewed by a]~~ nursing peer review committee review the
7 nurse and the incident[+

8 ~~[(1) applies only to a required report; and~~

9 ~~[(2)]~~ does not subject a person's administrative
10 decision to discipline a nurse to the peer review process or prevent
11 a person from taking disciplinary action before review by the peer
12 review committee is conducted.

13 (g) A person is not required to develop a written plan under
14 Subsection (c) for peer review of[+

15 ~~[(1)]~~ a registered nurse, unless the person regularly
16 employs, hires, or otherwise contracts for the services of at least
17 five registered nurses[~~+~~ or

18 ~~[(2) a vocational nurse, unless the person regularly~~
19 ~~employs, hires, or otherwise contracts for the services of at least~~
20 ~~five vocational nurses]~~.

21 (h) A plan developed under Subsection (c) must provide that
22 a nurse who has been terminated, either voluntarily or
23 involuntarily, shall have the opportunity to participate in peer
24 review. If the nurse elects to not participate in peer review, the
25 nurse waives any right to procedural due process under Section
26 303.002.

27 SECTION 13. Section 301.417(b), Occupations Code, is

amended to read as follows:

(b) The board may disclose the information to the same extent that the board may disclose information relating to a complaint under Section 301.466 ~~[use the information in connection with an investigation or disciplinary action against a license holder or in the subsequent trial or appeal of a board action or order. The board may disclose the information to:~~

~~[(1) a licensing or disciplinary authority of another jurisdiction;~~

~~[(2) a peer assistance program approved by the board under Chapter 467, Health and Safety Code; or~~

~~[(3) a person engaged in bona fide research or another educational purpose if all information identifying any specific individual is first deleted].~~

SECTION 14. Sections 303.003(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A nursing peer review committee ~~[that conducts a peer review that involves only the practice of professional nursing]~~ must have ~~[registered]~~ nurses as three-fourths of its members ~~[and may have only registered nurses as voting members]~~.

(b) A nursing peer review committee that conducts a peer review that involves ~~[only]~~ the practice of vocational nursing ~~[must have registered nurses and vocational nurses as three-fourths of its members]~~, to the extent feasible, must include vocational nurses as members~~[7]~~ and may have only registered nurses and vocational nurses as voting members.

(c) A nursing peer review committee that conducts a peer

1 review that involves the practice of ~~[both]~~ professional nursing
2 ~~[and vocational nursing].~~

3 ~~[(1)]~~ must have registered nurses ~~[and vocational~~
4 ~~nurses]~~ as two-thirds ~~[four-fifths]~~ of its members~~[, with~~
5 ~~registered nurses as three-fifths of its members,~~

6 ~~[(2) to the extent feasible must include vocational~~
7 ~~nurses as members,~~] and

8 ~~[(3)]~~ may have only~~+~~

9 ~~[(A) registered nurses and vocational nurses as~~
10 ~~voting members when a vocational nurse is being reviewed; and~~

11 ~~[(B)]~~ registered nurses as voting members ~~[when a~~
12 ~~registered nurse is being reviewed].~~

13 SECTION 15. Sections 303.005(a), (b), (c), and (h),
14 Occupations Code, are amended to read as follows:

15 (a) In this section, "duty to a patient" means conduct
16 required by standards of practice or professional conduct adopted
17 by the board for ~~[registered]~~ nurses ~~[or the Board of Vocational~~
18 ~~Nurse Examiners for licensed vocational nurses]~~. The term includes
19 administrative decisions directly affecting a nurse's ability to
20 comply with that duty.

21 (b) If a person who regularly employs, hires, or otherwise
22 contracts for the services of at least 10 nurses requests one of
23 those nurses to engage in conduct that the nurse believes violates a
24 nurse's duty to a patient, the nurse may request, on a form
25 developed or approved ~~[produced]~~ by the board, a determination by a
26 nursing peer review committee under this chapter of whether the
27 conduct violates a nurse's duty to a patient.

1 (c) A nurse who in good faith requests a peer review
2 determination under Subsection (b):

3 (1) may not be disciplined or discriminated against
4 for making the request;

5 (2) may engage in the requested conduct pending the
6 peer review;

7 (3) is not subject to the reporting requirement under
8 Subchapter I, Chapter 301[, ~~or the rules of the board or the Board~~
9 ~~of Vocational Nurse Examiners~~]; and

10 (4) may not be disciplined by the board [~~or the Board~~
11 ~~of Vocational Nurse Examiners~~] for engaging in that conduct while
12 the peer review is pending.

13 (h) A person is not required to provide a peer review
14 determination under this section for a request made by[+

15 [~~(1)~~] a registered nurse, unless the person regularly
16 employs, hires, or otherwise contracts for the services of at least
17 five registered nurses[, ~~or~~

18 [~~(2)~~ ~~a licensed vocational nurse, unless the person~~
19 ~~regularly employs, hires, or otherwise contracts for the services~~
20 ~~of at least five licensed vocational nurses~~].

21 SECTION 16. Section 303.008, Occupations Code, is amended
22 to read as follows:

23 Sec. 303.008. REBUTTAL STATEMENT. (a) If a nursing peer
24 review committee makes an adverse finding against a nurse
25 [~~discloses information under Section 303.007(a) that could result~~
26 ~~in the reprimand, suspension, or termination of, or other~~
27 ~~disciplinary action against, a nurse, or itself recommends or takes~~

1 ~~such an action~~], the committee shall provide the nurse with a
2 detailed description of [~~summary of information disclosed or~~] the
3 basis of its finding [~~action or recommendation~~].

4 (b) The peer review committee shall give the nurse the
5 opportunity to offer rebuttal information and to submit a rebuttal
6 statement of reasonable length. Any rebuttal statement must be
7 included with any [~~the~~] information disclosed by the committee
8 under Section 303.007.

9 SECTION 17. Sections 301.005, 301.417(c), and 304.010,
10 Occupations Code, are repealed.

11 SECTION 18. Section 301.155(c), Occupations Code, as
12 amended by this Act, applies only to a renewal of a license that
13 expires on or after the effective date of this Act. The renewal of a
14 license that expires before the effective date of this Act is
15 governed by the law that existed when the license expired, and the
16 former law is continued in effect for that purpose.

17 SECTION 19. The changes in law made by this Act regarding
18 reporting requirements apply only to a report made on or after the
19 effective date of this Act. A report made before the effective date
20 of this Act is governed by the law that existed when the report was
21 made, and the former law is continued in effect for that purpose.

22 SECTION 20. Sections 303.003 and 303.008, Occupations Code,
23 as amended by this Act, apply only to a peer review commenced on or
24 after the effective date of this Act. A peer review commenced
25 before the effective date of this Act is governed by the law that
26 existed when the peer review was commenced, and the former law is
27 continued in effect for that purpose.

1 SECTION 21. To the extent of any conflict, this Act prevails
2 over another Act of the 79th Legislature, Regular Session, 2005,
3 relating to nonsubstantive additions to and corrections in enacted
4 codes.

5 SECTION 22. This Act takes effect immediately if it
6 receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for immediate
9 effect, this Act takes effect September 1, 2005.