

By: McReynolds

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~~].

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

4 (1) the title "nurse"; or

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

7 SECTION 6. Section 301.351, Occupations Code, as amended by  
8 Section 1.027, Chapter 553, Acts of the 78th Legislature, Regular  
9 Session, 2003, and Section 5, Chapter 876, Acts of the 78th  
10 Legislature, Regular Session, 2003, is reenacted and amended to  
11 read as follows:

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

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

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

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

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

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

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

27 (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;

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 nurses under Subsection  
15 (a) [a nurse in its service against whom a ground under Section  
16 301.401 exists]. The plan must provide for [~~include an appropriate~~  
17 ~~process for the~~] review of the nurse and incident by a nursing peer  
18 review 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 nursing peer review committee is required even if the nurse was  
22 terminated, voluntarily or involuntary, but is only advisory.

23 (d) Except as otherwise provided by this subsection [~~The~~  
24 ~~review by~~] the nursing peer review committee shall submit a report  
25 to the board that contains the information required by Section  
26 301.403. A nursing peer review committee report is not required  
27 under this subsection if the nurse was terminated, voluntarily or

1 involuntarily, and elected not to participate in peer review [~~must~~  
2 ~~include a determination as to whether a ground under Section~~  
3 ~~301.401 exists to report the nurse undergoing review. The peer~~  
4 ~~review committee's determination must be included in the report~~  
5 ~~made to the board under Subsection (b)].~~

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

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

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

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

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

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

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

1 SECTION 13. Section 301.417(b), Occupations Code, is  
2 amended to read as follows:

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

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

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

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

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

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

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

1 (c) A nursing peer review committee that conducts a peer  
2 review that involves the practice of ~~[both]~~ professional nursing  
3 ~~[and vocational nursing];~~

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

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

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

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

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

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

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

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

1 conduct violates a nurse's duty to a patient.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 continued in effect for that purpose.

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

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