

By: Nelson

S.B. No. 791

A BILL TO BE ENTITLED

AN ACT

relating to the certified nurse aide registry and the regulation of certified nurse aides by the Texas Board of Nursing.

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

SECTION 1. Section 301.002, Occupations Code, is amended by adding Subdivision (6) to read as follows:

(6) "Certified nurse aide" means a person who holds a certificate of registration issued under this chapter as a certified nurse aide.

SECTION 2. Section 301.151, Occupations Code, is amended to read as follows:

Sec. 301.151. GENERAL RULEMAKING AUTHORITY. The board may adopt and enforce rules consistent with this chapter and necessary to:

(1) perform its duties and conduct proceedings before the board;

(2) regulate the practice of professional nursing and vocational nursing and the practice of certified nurse aides;

(3) establish standards of professional conduct for license and certificate holders under this chapter; ~~and~~

(4) determine the scope of practice for certified nurse aides; and

(5) determine whether an act constitutes the practice of professional nursing or vocational nursing or the practice of

1 certified nurse aides.

2 SECTION 3. Section 301.157, Occupations Code, is amended by  
3 adding Subsection (i) to read as follows:

4 (i) The board by rule shall:

5 (1) prescribe a program of study to qualify a person  
6 for an initial certificate of registration as a certified nurse  
7 aide; and

8 (2) approve training programs that meet the board's  
9 requirements for the program of study.

10 SECTION 4. Subchapter D, Chapter 301, Occupations Code, is  
11 amended by adding Section 301.1596 to read as follows:

12 Sec. 301.1596. CERTIFIED NURSE AIDE ADVISORY COMMITTEE.

13 (a) The board shall establish a certified nurse aide advisory  
14 committee to advise the board on the regulation of certified nurse  
15 aides.

16 (b) The advisory committee consists of at least 14 members  
17 appointed by the executive director as follows:

18 (1) two nursing home representatives;

19 (2) two representatives from community colleges with  
20 certified nurse aide training programs in this state;

21 (3) one hospital representative;

22 (4) one home health industry representative;

23 (5) three certified nurse aides, two with not more  
24 than five years' experience as certified nurse aides and one with at  
25 least five years' experience as a certified nurse aide;

26 (6) two representatives of certified nurse aide  
27 training programs that are not conducted by a facility described by

1 Section 250.001, Health and Safety Code, or a community college;

2 (7) one registered nurse with at least two years'  
3 experience in training certified nurse aides;

4 (8) one licensed vocational nurse with at least two  
5 years' experience in working directly with certified nurse aides;  
6 and

7 (9) one representative from the Department of Aging  
8 and Disability Services who is familiar with certified nurse aide  
9 training and regulation.

10 (c) The nurse aide advisory committee shall study and  
11 provide recommendations to the board in the manner required by the  
12 executive director on:

13 (1) improving communication between nurses and  
14 certified nurse aides;

15 (2) clarifying the scope of practice of certified  
16 nurse aides;

17 (3) clarifying the professional relationship between  
18 nurses and certified nurse aides;

19 (4) improving the practice of certified nurse aides;

20 (5) improving the training for certified nurse aides  
21 to more adequately meet the state health care system's acute and  
22 long-term care demands;

23 (6) establishing the program of study and classroom  
24 hours required for successful completion of a certified nurse aide  
25 training program;

26 (7) listing the subjects to be included in the  
27 training program curriculum to ensure the curriculum's continued

1 relevancy in health care, including consideration of curriculum  
2 related to:

3 (A) successful strategies for dealing with  
4 patients with dementia or other difficult patients;

5 (B) time management;

6 (C) task prioritizing;

7 (D) interpersonal communication skills;

8 (E) cultural sensitivity;

9 (F) teamwork training;

10 (G) psychosocial skills; and

11 (H) the aging process; and

12 (8) establishing the examination requirements for  
13 issuance of a certificate of registration as a certified nurse aide  
14 and for inclusion on the nurse aide registry.

15 (d) A member of the advisory committee is entitled to  
16 reimbursement for travel expenses incurred for service on the  
17 advisory committee as provided by the General Appropriations Act.  
18 A member may not receive any compensation for that service.

19 (e) The advisory committee shall meet regularly as  
20 necessary at the call of the presiding officer of the advisory  
21 committee or at the call of the executive director.

22 (f) The board shall provide administrative support for the  
23 advisory committee.

24 (g) Chapter 2110, Government Code, does not apply to the  
25 advisory committee established under this section.

26 SECTION 5. Subchapter D, Chapter 301, Occupations Code, is  
27 amended by adding Section 301.168 to read as follows:



1 person may not engage in practice as a certified nurse aide or hold  
2 out to the public that the person is a certified nurse aide or is  
3 included on the nurse aide registry under Chapter 250, Health and  
4 Safety Code, unless the person holds a certificate of registration  
5 as a certified nurse aide under this chapter and is included on the  
6 nurse aide registry under Chapter 250, Health and Safety Code.

7 (b) The board, in consultation with the nurse aide advisory  
8 committee established under Section 301.1596, by rule shall:

9 (1) define the scope of practice of a certified nurse  
10 aide, including the general criteria for delegation and supervision  
11 of tasks performed by a certified nurse aide; and

12 (2) establish the qualifications for holding a  
13 certificate of registration as a certified nurse aide and for  
14 inclusion on the nurse aide registry.

15 (c) The qualifications established by board rule must  
16 require a person applying to hold a certificate of registration as a  
17 certified nurse aide and to be included on the nurse aide registry  
18 to successfully complete:

19 (1) a board-approved training program that consists of  
20 not less than 90 hours and not more than 359 hours of course work as  
21 specified by board rule; and

22 (2) a competency examination on completion of the  
23 training program.

24 Sec. 301.282. APPLICATION. Each person applying for a  
25 certified nurse aide certificate of registration and for inclusion  
26 on the nurse aide registry must submit to the board a sworn  
27 application that demonstrates the applicant's qualifications under

1 this chapter, accompanied by evidence that the applicant:

2 (1) has good professional character;

3 (2) has successfully completed a training program  
4 approved by the board; and

5 (3) has passed the examination approved by the board.

6 Sec. 301.283. ISSUANCE AND INCLUSION; FEE. (a) The board  
7 shall issue a certificate of registration as a certified nurse aide  
8 to each qualified person who applies to the board on the form  
9 prescribed by the board and include the person on the nurse aide  
10 registry.

11 (b) The board may charge a fee for the issuance of a copy of  
12 a certificate of registration.

13 Sec. 301.284. TERM. (a) A certificate of registration as  
14 a certified nurse aide issued under this subchapter is valid for two  
15 years. The board shall include the expiration date on each  
16 certificate of registration issued under this subchapter.

17 (b) Inclusion on the nurse aide registry is valid until  
18 expiration of the certificate of registration.

19 Sec. 301.285. RENEWAL. (a) A person may renew the  
20 person's certificate of registration as a certified nurse aide and  
21 renew inclusion on the nurse aide registry by:

22 (1) submitting a renewal application to the board on  
23 the form prescribed by the board before the registration expires;

24 (2) providing proof that the person has successfully  
25 completed during the preceding two years the continuing education  
26 hours required by Subsection (b); and

27 (3) complying with any other renewal requirements

1 adopted by the board.

2 (b) A person who is registered as a certified nurse aide and  
3 who is included on the nurse aide registry shall annually in  
4 accordance with board rules complete at least 12 hours of  
5 continuing education.

6 (c) At least 30 days before the expiration of the person's  
7 certificate of registration, the board shall send written notice of  
8 the impending certificate expiration to the person at the person's  
9 last known address according to the records of the board.

10 SECTION 7. Subsection (b), Section 301.407, Occupations  
11 Code, is amended to read as follows:

12 (b) Unless expressly prohibited by state or federal law, a  
13 state agency that has reason to believe that a nurse or nurse aide  
14 has engaged in conduct subject to reporting shall report the nurse  
15 or nurse aide in writing to the board or to a nursing peer review  
16 committee under Chapter 303.

17 SECTION 8. Section 301.451, Occupations Code, is amended to  
18 read as follows:

19 Sec. 301.451. CERTAIN PROHIBITED PRACTICES. A person may  
20 not:

21 (1) sell, fraudulently obtain, or fraudulently  
22 furnish a nursing diploma, license, certificate, renewal license or  
23 certificate, or record;

24 (2) assist another person in selling, fraudulently  
25 obtaining, or fraudulently furnishing a nursing diploma, license,  
26 certificate, renewal license or certificate, or record;

27 (3) practice nursing or practice as a nurse aide under



1 a diploma, license, certificate, or record that was:

2 (A) obtained unlawfully or fraudulently; or

3 (B) signed or issued unlawfully or under false  
4 representation; or

5 (4) practice nursing or practice as a nurse aide in a  
6 period in which the person's license or certificate is suspended or  
7 revoked.

8 SECTION 9. Subsection (b), Section 301.452, Occupations  
9 Code, is amended to read as follows:

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

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

15 (2) fraud or deceit in procuring or attempting to  
16 procure a license to practice professional nursing or vocational  
17 nursing or a nurse aide certificate;

18 (3) a conviction for, or placement on deferred  
19 adjudication community supervision or deferred disposition for, a  
20 felony or for a misdemeanor involving moral turpitude;

21 (4) conduct that results in the revocation of  
22 probation imposed because of conviction for a felony or for a  
23 misdemeanor involving moral turpitude;

24 (5) use of a nursing license, diploma, or permit, a  
25 nurse aide certificate, or the transcript of such a document, that  
26 has been fraudulently purchased, issued, counterfeited, or  
27 materially altered;

1           (6) impersonating or acting as a proxy for another  
2 person in the licensing examination required under Section 301.253  
3 or 301.255;

4           (7) directly or indirectly aiding or abetting an  
5 unlicensed or uncertified person in connection with the  
6 unauthorized practice of nursing or unauthorized practice as a  
7 nurse aide;

8           (8) revocation, suspension, or denial of, or any other  
9 action relating to, the person's license, certificate, or privilege  
10 to practice nursing or to practice as a nurse aide in another  
11 jurisdiction;

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

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

17           (11) adjudication of mental incompetency;

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

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

25           SECTION 10. Section 301.453, Occupations Code, is amended  
26 to read as follows:

27           Sec. 301.453. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF

1 DISCIPLINE. (a) If the board determines that a person has  
2 committed an act listed in Section 301.452(b), the board shall  
3 enter an order imposing one or more of the following:

4 (1) denial of the person's application for a license or  
5 certificate, license or certificate renewal, or temporary permit;

6 (2) issuance of a written warning;

7 (3) administration of a public reprimand;

8 (4) limitation or restriction of the person's license  
9 or certificate, including:

10 (A) limiting to or excluding from the person's  
11 practice one or more specified activities of nursing or as a nurse  
12 aide; or

13 (B) stipulating periodic board review;

14 (5) suspension of the person's license or certificate  
15 for a period not to exceed five years;

16 (6) revocation of the person's license or certificate;

17 or

18 (7) assessment of a fine.

19 (b) In addition to or instead of an action under Subsection  
20 (a), the board, by order, may require the person to:

21 (1) submit to care, counseling, or treatment by a  
22 health provider designated by the board as a condition for the  
23 issuance or renewal of a license or certificate;

24 (2) participate in a program of education or  
25 counseling prescribed by the board;

26 (3) practice for a specified period under the  
27 direction of a registered nurse or vocational nurse designated by

1 the board; or

2 (4) perform public service the board considers  
3 appropriate.

4 (c) The board may probate any penalty imposed on a nurse or  
5 nurse aide and may accept the voluntary surrender of a license or  
6 certificate. The board may not reinstate a surrendered license or  
7 certificate unless it determines that the person is competent to  
8 resume practice.

9 (d) If the board suspends, revokes, or accepts surrender of  
10 a license or certificate, the board may impose conditions for  
11 reinstatement that the person must satisfy before the board may  
12 issue an unrestricted license or certificate.

13 SECTION 11. Subsection (c), Section 301.4531, Occupations  
14 Code, is amended to read as follows:

15 (c) In the case of a person described by:

16 (1) Subsection (b)(1)(A), the board shall consider  
17 taking a more severe disciplinary action, including revocation of  
18 the person's license or certificate, than the disciplinary action  
19 that would be taken for a single violation; and

20 (2) Subsection (b)(1)(B), the board shall consider  
21 taking a more severe disciplinary action, including revocation of  
22 the person's license or certificate, than the disciplinary action  
23 that would be taken for a person who has not previously been the  
24 subject of disciplinary action by the board.

25 SECTION 12. Section 301.4535, Occupations Code, is amended  
26 to read as follows:

27 Sec. 301.4535. REQUIRED SUSPENSION, REVOCATION, OR REFUSAL

1 OF LICENSE OR CERTIFICATE FOR CERTAIN OFFENSES. (a) The board  
2 shall suspend a nurse's license or a nurse aide's certificate or  
3 refuse to issue a license or certificate to an applicant on proof  
4 that the nurse, nurse aide, or applicant has been initially  
5 convicted of:

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

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

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

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

15 (5) continuous sexual abuse of young child or children  
16 under Section 21.02, Penal Code, or indecency with a child under  
17 Section 21.11, Penal Code;

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

20 (7) intentionally, knowingly, or recklessly injuring  
21 a child, elderly individual, or disabled individual under Section  
22 22.04, Penal Code;

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

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

27 (10) an offense under Section 25.07, Penal Code,

1 punished as a felony;

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

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

6 (13) the sale or purchase of a child under Section  
7 25.08, Penal Code;

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

9 (15) aggravated robbery under Section 29.03, Penal  
10 Code;

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

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

18 (b) On final conviction or a plea of guilty or nolo  
19 contendere for an offense listed in Subsection (a), the board, as  
20 appropriate, may not issue a license or certificate to an  
21 applicant, shall refuse to renew a license or certificate, or shall  
22 revoke a license or certificate if the applicant or license or  
23 certificate holder did not previously disclose the conviction or  
24 plea and the fifth anniversary of the date the person successfully  
25 completed community supervision or parole has not occurred.

26 (c) A person is not eligible for an initial license or  
27 certificate or for reinstatement or endorsement of a license to

1 practice nursing or a certificate as a nurse aide in this state  
2 before the fifth anniversary of the date the person successfully  
3 completed and was dismissed from community supervision or parole  
4 for an offense described by Subsection (a).

5 SECTION 13. Subsections (a), (c), and (e), Section 301.454,  
6 Occupations Code, are amended to read as follows:

7 (a) Except in the case of a temporary suspension authorized  
8 under Section 301.455 or an action taken in accordance with an  
9 agreement between the board and a license or certificate holder,  
10 the board may not initiate a disciplinary action relating to a  
11 license or certificate unless:

12 (1) the board has served notice to the license or  
13 certificate holder of the facts or conduct alleged to warrant the  
14 intended action; and

15 (2) the license or certificate holder has been given  
16 an opportunity, in writing or through an informal meeting, to show  
17 compliance with all requirements of law for the retention of the  
18 license or certificate.

19 (c) A person is entitled to a hearing conducted by the State  
20 Office of Administrative Hearings if the board proposes to:

21 (1) refuse to admit the person to examination;

22 (2) refuse to issue a license, certificate, or  
23 temporary permit;

24 (3) refuse to renew a license or certificate; or

25 (4) suspend or revoke the person's license,  
26 certificate, or permit.

27 (e) Notwithstanding Subsection (a), a person is not

1 entitled to a hearing on a refusal to renew a license or certificate  
2 if the person:

- 3 (1) fails to submit a renewal application; or
- 4 (2) submits an application that:
  - 5 (A) is incomplete;
  - 6 (B) shows on its face that the person does not
  - 7 meet the renewal requirements; or
  - 8 (C) is not accompanied by the correct fee.

9 SECTION 14. The heading of Section 301.455, Occupations  
10 Code, is amended to read as follows:

11 Sec. 301.455. TEMPORARY LICENSE OR CERTIFICATE SUSPENSION  
12 OR RESTRICTION.

13 SECTION 15. Subsections (a) and (b), Section 301.455,  
14 Occupations Code, are amended to read as follows:

15 (a) The license of a nurse or the certificate of a nurse aide  
16 shall be temporarily suspended or restricted on a determination by  
17 a majority of the board or a three-member committee of board members  
18 designated by the board that, from the evidence or information  
19 presented, the continued practice of the nurse or nurse aide would  
20 constitute a continuing and imminent threat to the public welfare.

21 (b) A license or certificate may be temporarily suspended or  
22 restricted under this section without notice or hearing on the  
23 complaint if:

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



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

3           SECTION 16. The heading of Section 301.457, Occupations  
4 Code, is amended to read as follows:

5           Sec. 301.457. COMPLAINT AND INVESTIGATION RELATED TO  
6 NURSES.

7           SECTION 17. Subchapter J, Chapter 301, Occupations Code, is  
8 amended by adding Section 301.4571 to read as follows:

9           Sec. 301.4571. COMPLAINT AND INVESTIGATION RELATED TO NURSE  
10 AIDES. (a) The board or any person may initiate a proceeding under  
11 this subchapter by filing with the board a complaint against a nurse  
12 aide. The complaint must be in writing and signed by the  
13 complainant.

14           (b) Except as otherwise provided by this section, the board  
15 or a person authorized by the board shall conduct each  
16 investigation. Each complaint against a nurse aide that requires a  
17 determination of competency shall be reviewed by a board member,  
18 consultant, or employee with a nursing background the board  
19 considers sufficient.

20           (c) On the filing of a complaint, the board:

21                   (1) may conduct a preliminary investigation into the  
22 identity of the nurse aide named or described in the complaint;

23                   (2) shall make a timely and appropriate preliminary  
24 investigation of the complaint; and

25                   (3) may issue a warning or reprimand to the nurse aide.

26           (d) After any preliminary investigation to determine the  
27 identity of the subject of the complaint, unless it would

1 jeopardize an investigation, the board shall notify the nurse aide  
2 that a complaint has been filed and the nature of the complaint. If  
3 the investigation reveals probable cause to take further  
4 disciplinary action, the board shall either attempt an informal  
5 disposition of the complaint or file a formal charge against the  
6 nurse aide stating the provision of this chapter or board rule that  
7 is alleged to have been violated and a brief description of each act  
8 or omission that constitutes the violation.

9 (e) The board shall conduct an investigation of the  
10 complaint to determine:

11 (1) whether the nurse aide's continued practice poses  
12 a risk of harm to clients or other persons; and

13 (2) whether probable cause exists that a nurse aide  
14 committed an act listed in Section 301.452(b) or that violates  
15 other law.

16 (f) In making a determination under Subsection (e), the  
17 board shall review the evidence to determine the extent to which a  
18 deficiency in care by the nurse aide was the result of deficiencies  
19 in the nurse aide's judgment, knowledge, training, or skill rather  
20 than other factors beyond the nurse aide's control. A  
21 determination that a deficiency in care is attributable to a nurse  
22 aide must be based on the extent to which the nurse aide's conduct  
23 was the result of a deficiency in the nurse aide's judgment,  
24 knowledge, training, or skill.

25 (g) If the board determines after investigating a complaint  
26 under Subsection (e) that there is reason to believe that a nurse  
27 aide's deficiency in care was the result of a factor beyond the

1 nurse aide's control, the board shall report that determination to  
2 the patient safety committee at the facility where the nurse aide's  
3 deficiency in care occurred or, if the facility does not have a  
4 patient safety committee, to the chief nursing officer.

5 (h) The board and the Department of Aging and Disability  
6 Services shall share investigation information, including files,  
7 reports, witness lists, findings, and any other pertinent  
8 information related to the investigation of a nurse aide by the  
9 board or department.

10 SECTION 18. Subsections (a) and (c), Section 301.458,  
11 Occupations Code, are amended to read as follows:

12 (a) Unless there is an agreed disposition of the complaint  
13 under Section 301.463, and if probable cause is found under Section  
14 301.457(e)(2) or Section 301.4571(e)(2), the board or the board's  
15 authorized representative shall initiate proceedings by filing  
16 formal charges against the nurse or nurse aide.

17 (c) A copy of the formal charge shall be served on the nurse  
18 or nurse aide, or on the nurse's or nurse aide's counsel of record.

19 SECTION 19. Subsection (b), Section 301.459, Occupations  
20 Code, is amended to read as follows:

21 (b) In any hearing under this section, a nurse or nurse aide  
22 is entitled to appear in person or by counsel.

23 SECTION 20. Subsection (a), Section 301.460, Occupations  
24 Code, is amended to read as follows:

25 (a) Except for good cause shown for delay and subject to any  
26 other privilege or restriction set forth by statute, rule, or legal  
27 precedent, the board shall, not later than the 30th day after the

1 date the board receives a written request from a license or  
2 certificate holder who is the subject of a formal charge filed under  
3 Section 301.458 or from the license or certificate holder's counsel  
4 of record, provide the license or certificate holder with access  
5 to:

6 (1) all known exculpatory information in the board's  
7 possession; and

8 (2) information in the board's possession that the  
9 board intends to offer into evidence in presenting its case in chief  
10 at the contested hearing on the complaint.

11 SECTION 21. Section 301.462, Occupations Code, is amended  
12 to read as follows:

13 Sec. 301.462. VOLUNTARY SURRENDER OF LICENSE OR  
14 CERTIFICATE. (a) The board may revoke a nurse's license without  
15 formal charges, notice, or opportunity of hearing if the nurse  
16 voluntarily surrenders the nurse's license to the board and  
17 executes a sworn statement that the nurse does not desire to be  
18 licensed.

19 (b) The board may revoke a nurse aide's certificate without  
20 formal charges, notice, or opportunity of hearing if the nurse aide  
21 voluntarily surrenders the nurse aide's certificate to the board  
22 and executes a sworn statement that the nurse aide does not desire  
23 to be certified.

24 SECTION 22. Subsection (b), Section 301.464, Occupations  
25 Code, is amended to read as follows:

26 (b) Rules adopted under this section must:

27 (1) provide the complainant and the license or

1 certificate holder an opportunity to be heard; and

2 (2) require the presence of a representative of the  
3 board's legal staff or of the attorney general to advise the board  
4 or the board's employees.

5 SECTION 23. Section 301.466, Occupations Code, is amended  
6 to read as follows:

7 Sec. 301.466. CONFIDENTIALITY. (a) A complaint and  
8 investigation concerning a nurse or nurse aide under this  
9 subchapter and all information and material compiled by the board  
10 in connection with the complaint and investigation are:

11 (1) confidential and not subject to disclosure under  
12 Chapter 552, Government Code; and

13 (2) not subject to disclosure, discovery, subpoena, or  
14 other means of legal compulsion for release to anyone other than the  
15 board or a board employee or agent involved in license or  
16 certificate holder discipline.

17 (b) Notwithstanding Subsection (a), information regarding a  
18 complaint and an investigation may be disclosed to:

19 (1) a person involved with the board in a disciplinary  
20 action against the nurse or nurse aide;

21 (2) a nursing licensing, certifying, or disciplinary  
22 board in another jurisdiction;

23 (3) a peer assistance program approved by the board  
24 under Chapter 467, Health and Safety Code;

25 (4) a law enforcement agency; or

26 (5) a person engaged in bona fide research, if all  
27 information identifying a specific individual has been deleted.

1 (c) The filing of formal charges against a nurse or nurse  
2 aide by the board, the nature of those charges, disciplinary  
3 proceedings of the board, and final disciplinary actions, including  
4 warnings and reprimands, by the board are not confidential and are  
5 subject to disclosure in accordance with Chapter 552, Government  
6 Code.

7 SECTION 24. Subsections (a) and (b), Section 301.467,  
8 Occupations Code, are amended to read as follows:

9 (a) On application, the board may reinstate:

10 (1) a license to practice professional nursing or  
11 vocational nursing to a person whose license has been revoked,  
12 suspended, or surrendered; or

13 (2) a certificate of a nurse aide to a person whose  
14 certificate has been revoked, suspended, or surrendered.

15 (b) An application to reinstate a revoked license or  
16 certificate:

17 (1) may not be made before the first anniversary of the  
18 date of the revocation; and

19 (2) must be made in the manner and form the board  
20 requires.

21 SECTION 25. Section 301.468, Occupations Code, is amended  
22 by amending Subsections (a) and (c) and adding Subsections (a-1)  
23 and (a-2) to read as follows:

24 (a) The board may determine that an order denying a license  
25 or certificate application or suspending a license or certificate  
26 be probated.

27 (a-1) A person subject to a probation order under Subsection

1 (a) related to a license shall conform to each condition the board  
2 sets as the terms of probation, including a condition:

3 (1) limiting the practice of the person to, or  
4 excluding, one or more specified activities of professional nursing  
5 or vocational nursing; or

6 (2) requiring the person to submit to supervision,  
7 care, counseling, or treatment by a practitioner designated by the  
8 board.

9 (a-2) A person subject to a probation order under Subsection  
10 (a) related to a certificate shall conform to each condition the  
11 board sets as the terms of probation, including a condition:

12 (1) limiting the practice of the person to, or  
13 excluding, one or more specified activities performed by nurse  
14 aides; or

15 (2) requiring the person to submit to supervision,  
16 care, counseling, or treatment by a practitioner designated by the  
17 board.

18 (c) At any time while the person remains subject to the  
19 probation order, the board may hold a hearing and rescind the  
20 probation and enforce the board's original action in denying or  
21 suspending the license or certificate. The hearing shall be called  
22 by the presiding officer of the board, who shall issue a notice to  
23 be served on the person or the person's counsel not later than the  
24 20th day before the date scheduled for the hearing that:

25 (1) sets the time and place for the hearing; and

26 (2) contains the charges or complaints against the  
27 probationer.

1 SECTION 26. Section 301.469, Occupations Code, is amended  
2 to read as follows:

3 Sec. 301.469. NOTICE OF FINAL ACTION. If the board takes a  
4 final disciplinary action, including a warning or reprimand,  
5 against a nurse or nurse aide under this subchapter, the board shall  
6 immediately send a copy of the board's final order to the nurse or  
7 nurse aide and to the last known employer of the nurse or nurse  
8 aide.

9 SECTION 27. Section 301.470, Occupations Code, is amended  
10 to read as follows:

11 Sec. 301.470. REFUND. (a) Subject to Subsection (b), the  
12 board may order a license or certificate holder to pay a refund to a  
13 consumer as provided in an agreement resulting from an informal  
14 settlement conference instead of or in addition to imposing an  
15 administrative penalty under this chapter.

16 (b) The amount of a refund ordered as provided in an  
17 agreement resulting from an informal settlement conference may not  
18 exceed the amount the consumer paid to a nurse or nurse aide for a  
19 service regulated by this chapter or the actual amount stolen or  
20 defrauded from a patient by the nurse or nurse aide. The board may  
21 not require payment of other damages or estimate harm in a refund  
22 order.

23 SECTION 28. Section 301.471, Occupations Code, is amended  
24 by adding Subsection (a-1) and amending Subsection (b) to read as  
25 follows:

26 (a-1) If it appears to the board that a person who is not  
27 certified as a nurse aide under this chapter is violating this



1 chapter, a rule adopted under this chapter, or another state  
2 statute or rule relating to the practice of a nurse aide and the  
3 board determines that the unauthorized activity constitutes a  
4 clear, imminent, or continuing threat to the public health and  
5 safety, the board may:

6 (1) issue an emergency cease and desist order  
7 prohibiting the person from engaging in the activity; and

8 (2) report the activity to a local law enforcement  
9 agency or the attorney general for prosecution.

10 (b) An order issued under Subsection (a) or (a-1) must:

11 (1) be delivered on issuance to the person affected by  
12 the order by personal delivery or registered or certified mail,  
13 return receipt requested, to the person's last known address;

14 (2) state the acts or practices alleged to be an  
15 unauthorized activity and require the person immediately to cease  
16 and desist from the unauthorized activity; and

17 (3) contain a notice that a request for hearing may be  
18 filed under this section.

19 SECTION 29. Section 301.552, Occupations Code, is amended  
20 to read as follows:

21 Sec. 301.552. MONITORING OF LICENSE OR CERTIFICATE HOLDER.  
22 The board by rule shall develop a system for monitoring the  
23 compliance of license and certificate holders with the requirements  
24 of this chapter. Rules adopted under this section must include  
25 procedures to:

26 (1) monitor for compliance a license or certificate  
27 holder who is ordered by the board to perform certain acts; and

1           (2) identify and monitor each license or certificate  
2 holder who represents a risk to the public.

3           SECTION 30. Section 250.001, Health and Safety Code, is  
4 amended by amending Subdivisions (1) and (3) and adding Subdivision  
5 (6) to read as follows:

6           (1) "Nurse aide registry" means a list of certified  
7 nurse aides maintained and administered by the Texas Board of  
8 Nursing as provided by Chapter 301, Occupations Code, under the  
9 oversight of the [~~Texas~~] Department of Aging and Disability [~~Human~~]  
10 Services and maintained in compliance with [~~of nurse aides under~~]  
11 the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No.  
12 100-203).

13           (3) "Facility" means:

14           (A) a nursing home, custodial care home, or other  
15 institution licensed by the department [~~Texas Department of Human~~  
16 ~~Services~~] under Chapter 242;

17           (B) an assisted living facility licensed by the  
18 department [~~Texas Department of Human Services~~] under Chapter 247;

19           (C) a home and community support services agency  
20 licensed under Chapter 142;

21           (D) an adult day care facility licensed by the  
22 department [~~Texas Department of Human Services~~] under Chapter 103,  
23 Human Resources Code;

24           (E) a facility for persons with mental  
25 retardation licensed under Chapter 252;

26           (F) an adult foster care provider that contracts  
27 with the department [~~Texas Department of Human Services~~];

1 (G) a facility that provides mental health  
2 services and that is operated by or contracts with the [~~Texas~~]  
3 Department of State [~~Mental~~] Health Services [~~and Mental~~  
4 ~~Retardation~~];

5 (H) a local mental health or mental retardation  
6 authority designated under Section 533.035; or

7 (I) a person exempt from licensing under Section  
8 142.003(a)(19).

9 (6) "Department" means the Department of Aging and  
10 Disability Services.

11 SECTION 31. Chapter 250, Health and Safety Code, is amended  
12 by adding Section 250.0011 to read as follows:

13 Sec. 250.0011. NURSE AIDE REGISTRY. (a) The department  
14 shall establish a registry of certified nurse aides.

15 (b) The department shall oversee the nurse aide registry  
16 administered and maintained by the Texas Board of Nursing under  
17 Chapter 301, Occupations Code, and under the interagency contract  
18 between the department, the Health and Human Services Commission,  
19 and the board.

20 (c) The department shall place any finding of abuse,  
21 neglect, or exploitation by a certified nurse aide in the registry  
22 and in the employee misconduct registry maintained under Chapter  
23 253.

24 SECTION 32. (a) Not later than October 1, 2009, the  
25 executive director of the Texas Board of Nursing shall appoint the  
26 members to the nurse aide advisory committee established by Section  
27 301.1596, Occupations Code, as added by this Act.

1           (b) Not later than January 1, 2010, the Texas Board of  
2 Nursing, the Health and Human Services Commission, and the  
3 Department of Aging and Disability Services shall enter into an  
4 interagency contract as required by Section 301.168, Occupations  
5 Code, as added by this Act.

6           (c) Not later than May 1, 2010, the Texas Board of Nursing  
7 shall:

8                   (1) establish the qualifications for issuance of a  
9 certificate of registration and renewal of a certificate of  
10 registration as a certified nurse aide; and

11                   (2) adopt the rules necessary to implement the changes  
12 in law made by this Act.

13           SECTION 33. (a) A person listed as a certified nurse aide  
14 on the nurse aide registry under Chapter 250, Health and Safety  
15 Code, on the effective date of this Act is entitled to renew a  
16 certificate of registration as a certified nurse aide and renew  
17 inclusion on the nurse aide registry without fulfilling any  
18 additional educational training or examination requirements  
19 established by the Texas Board of Nursing under Chapter 301,  
20 Occupations Code, as amended by this Act, if the person has the  
21 other qualifications required by the board and Chapter 301,  
22 Occupations Code, and if, before August 31, 2010, the person  
23 submits a renewal application as required by Chapter 301.

24           (b) Chapter 301, Occupations Code, as amended by this Act,  
25 applies only to the issuance of a certificate of registration or  
26 renewal of a certificate of registration as a certified nurse aide  
27 and the inclusion or renewal of inclusion on the nurse aide registry

1 under Chapter 250, Health and Safety Code, as amended by this Act,  
2 on or after September 1, 2010.

3 (c) Except as provided by Subsection (d) of this section, an  
4 application for issuance of a certificate of registration or  
5 renewal of a certificate of registration as a certified nurse aide  
6 under Chapter 301, Occupations Code, as amended by this Act, and the  
7 inclusion or renewal of inclusion on the nurse aide registry under  
8 Chapter 250, Health and Safety Code, as amended by this Act, before  
9 the effective date of this Act is covered by the law in effect  
10 immediately before that date, and that law is continued in effect  
11 for that purpose.

12 (d) The Department of Aging and Disability Services shall  
13 include the expiration date, as required by Chapter 301,  
14 Occupations Code, as amended by this Act, on each certified nurse  
15 aide certificate of registration issued or renewed by the  
16 department on or after the effective date of this Act. A certified  
17 nurse aide certificate of registration issued by the Department of  
18 Aging and Disability Services before the effective date of this Act  
19 expires on the earlier of the second anniversary of the date of  
20 issuance of the certificate or August 31, 2011.

21 SECTION 34. This Act takes effect September 1, 2009.