

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 13 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; and

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

6 (c) The nurse aide advisory committee shall study and
7 provide recommendations to the board in the manner required by the
8 commissioner on:

9 (1) improving communication between nurses and
10 certified nurse aides;

11 (2) clarifying the scope of practice of certified
12 nurse aides;

13 (3) clarifying the professional relationship between
14 nurses and certified nurse aides;

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

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

19 (6) establishing the program of study and classroom
20 hours required for successful completion of a certified nurse aide
21 training program;

22 (7) listing the subjects to be included in the
23 training program curriculum to ensure the curriculum's continued
24 relevancy in health care, including consideration of curriculum
25 related to:

26 (A) successful strategies for dealing with
27 patients with dementia or other difficult patients;

- 1 (B) time management;
- 2 (C) task prioritizing;
- 3 (D) interpersonal communication skills;
- 4 (E) cultural sensitivity;
- 5 (F) teamwork training;
- 6 (G) psychosocial skills; and
- 7 (H) the aging process; and

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

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

15 (e) The advisory committee shall meet regularly as
16 necessary at the call of the presiding officer of the advisory
17 committee or at the call of the executive director.

18 (f) The board shall provide administrative support for the
19 advisory committee.

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

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

24 Sec. 301.168. INTERAGENCY CONTRACT. (a) The board shall
25 enter into an interagency contract with the Health and Human
26 Services Commission and the Department of Aging and Disability
27 Services under which the board shall administer and maintain the

1 nurse aide registry established under Chapter 250, Health and
2 Safety Code.

3 (b) The interagency contract must provide that:

4 (1) the Department of Aging and Disability Services
5 has oversight authority over the nurse aide registry established
6 under Chapter 250, Health and Safety Code;

7 (2) the department is the only state agency authorized
8 to place findings of abuse, neglect, or exploitation in the
9 registry as prescribed by federal law;

10 (3) the board shall administer and maintain the daily
11 operation of the registry and receive the necessary federal funding
12 from the department to reimburse the board for the duties performed
13 by the board; and

14 (4) the department is responsible for reimbursement
15 provided to nursing home providers for the cost of certified nurse
16 aide training at the provider's facilities.

17 SECTION 6. Chapter 301, Occupations Code, is amended by
18 adding Subchapter F-1 to read as follows:

19 SUBCHAPTER F-1. NURSE AIDES: REGISTRATION AND REGISTRATION
20 RENEWAL REQUIREMENTS

21 Sec. 301.281. CERTIFICATE OF REGISTRATION REQUIRED. (a) A
22 person may not engage in practice as a certified nurse aide or hold
23 out to the public that the person is a certified nurse aide or is
24 included on the nurse aide registry under Chapter 250, Health and
25 Safety Code, unless the person holds a certificate of registration
26 as a certified nurse aide under this chapter and is included on the
27 nurse aide registry under Chapter 250.

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

3 (1) define the scope of practice of a certified nurse
4 aide; and

5 (2) establish the qualifications for holding a
6 certificate of registration as a certified nurse aide and for
7 inclusion on the nurse aide registry.

8 (c) The qualifications established by the board must
9 require a person applying to hold a certificate of registration as a
10 certified nurse aide and to be included on the nurse aide registry
11 to successfully complete:

12 (1) a board-approved training program that consists of
13 not less than 120 hours and not more than 359 hours of course work as
14 specified by board rule; and

15 (2) a competency examination on completion of the
16 training program.

17 Sec. 301.282. APPLICATION. Each person applying for a
18 certified nurse aide certificate of registration and for inclusion
19 on the nurse aide registry must submit to the board a sworn
20 application that demonstrates the applicant's qualifications under
21 this chapter, accompanied by evidence that the applicant:

22 (1) has good professional character;

23 (2) has successfully completed a training program
24 approved by the board; and

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

26 Sec. 301.283. ISSUANCE AND INCLUSION; FEE. (a) The board
27 shall issue a certificate of registration as a certified nurse aide

1 to each qualified person who applies to the board on the form
2 prescribed by the board and include the person on the nurse aide
3 registry.

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

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

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

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

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

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

20 (3) complying with any other renewal requirements
21 adopted by the board.

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

26 (c) At least 30 days before the expiration of the person's
27 certificate of registration, the board shall send written notice of

1 the impending certificate expiration to the person at the person's
2 last known address according to the records of the board.

3 SECTION 7. Section 301.407(b), Occupations Code, is amended
4 to read as follows:

5 (b) Unless expressly prohibited by state or federal law, a
6 state agency that has reason to believe that a nurse or nurse aide
7 has engaged in conduct subject to reporting shall report the nurse
8 or nurse aide in writing to the board or to a nursing peer review
9 committee under Chapter 303.

10 SECTION 8. Section 301.451, Occupations Code, is amended to
11 read as follows:

12 Sec. 301.451. CERTAIN PROHIBITED PRACTICES. A person may
13 not:

14 (1) sell, fraudulently obtain, or fraudulently
15 furnish a nursing diploma, license, certificate, renewal license or
16 certificate, or record;

17 (2) assist another person in selling, fraudulently
18 obtaining, or fraudulently furnishing a nursing diploma, license,
19 certificate, renewal license or certificate, or record;

20 (3) practice nursing or practice as a nurse aide under
21 a diploma, license, certificate, or record that was:

22 (A) obtained unlawfully or fraudulently; or

23 (B) signed or issued unlawfully or under false
24 representation; or

25 (4) practice nursing or practice as a nurse aide in a
26 period in which the person's license or certificate is suspended or
27 revoked.

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

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

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

8 (2) fraud or deceit in procuring or attempting to
9 procure a license to practice professional nursing or vocational
10 nursing or a nurse aide certificate;

11 (3) a conviction for, or placement on deferred
12 adjudication community supervision or deferred disposition for, a
13 felony or for a misdemeanor involving moral turpitude;

14 (4) conduct that results in the revocation of
15 probation imposed because of conviction for a felony or for a
16 misdemeanor involving moral turpitude;

17 (5) use of a nursing license, diploma, or permit, a
18 nurse aide certificate, or the transcript of such a document, that
19 has been fraudulently purchased, issued, counterfeited, or
20 materially altered;

21 (6) impersonating or acting as a proxy for another
22 person in the licensing examination required under Section 301.253
23 or 301.255;

24 (7) directly or indirectly aiding or abetting an
25 unlicensed or uncertified person in connection with the
26 unauthorized practice of nursing or unauthorized practice as a
27 nurse aide;

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

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

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

10 (11) adjudication of mental incompetency;

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

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

18 SECTION 10. Section 301.453, Occupations Code, is amended
19 to read as follows:

20 Sec. 301.453. DISCIPLINARY AUTHORITY OF BOARD; METHODS OF
21 DISCIPLINE. (a) If the board determines that a person has
22 committed an act listed in Section 301.452(b), the board shall
23 enter an order imposing one or more of the following:

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

26 (2) issuance of a written warning;

27 (3) administration of a public reprimand;

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

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

6 (B) stipulating periodic board review;

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

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

11 (7) assessment of a fine.

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

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

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

19 (3) practice for a specified period under the
20 direction of a registered nurse or vocational nurse designated by
21 the board; or

22 (4) perform public service the board considers
23 appropriate.

24 (c) The board may probate any penalty imposed on a nurse or
25 nurse aide and may accept the voluntary surrender of a license or
26 certificate. The board may not reinstate a surrendered license or
27 certificate unless it determines that the person is competent to

1 resume practice.

2 (d) If the board suspends, revokes, or accepts surrender of
3 a license or certificate, the board may impose conditions for
4 reinstatement that the person must satisfy before the board may
5 issue an unrestricted license or certificate.

6 SECTION 11. Section 301.4531(c), Occupations Code, is
7 amended to read as follows:

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

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

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

18 SECTION 12. Section 301.4535, Occupations Code, is amended
19 to read as follows:

20 Sec. 301.4535. REQUIRED SUSPENSION, REVOCATION, OR REFUSAL
21 OF LICENSE OR CERTIFICATE FOR CERTAIN OFFENSES. (a) The board
22 shall suspend a nurse's license or a nurse aide's certificate or
23 refuse to issue a license or certificate to an applicant on proof
24 that the nurse, nurse aide, or applicant has been initially
25 convicted of:

26 (1) murder under Section 19.02, Penal Code, capital
27 murder under Section 19.03, Penal Code, or manslaughter under

1 Section 19.04, Penal Code;

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

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

6 (4) aggravated sexual assault under Section 22.021,
7 Penal Code;

8 (5) continuous sexual abuse of young child or children
9 under Section 21.02, Penal Code, or indecency with a child under
10 Section 21.11, Penal Code;

11 (6) aggravated assault under Section 22.02, Penal
12 Code;

13 (7) intentionally, knowingly, or recklessly injuring
14 a child, elderly individual, or disabled individual under Section
15 22.04, Penal Code;

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

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

20 (10) an offense under Section 25.07, Penal Code,
21 punished as a felony;

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

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

26 (13) the sale or purchase of a child under Section
27 25.08, Penal Code;

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

2 (15) aggravated robbery under Section 29.03, Penal
3 Code;

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

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

11 (b) On final conviction or a plea of guilty or nolo
12 contendere for an offense listed in Subsection (a), the board, as
13 appropriate, may not issue a license or certificate to an
14 applicant, shall refuse to renew a license or certificate, or shall
15 revoke a license or certificate if the applicant or license or
16 certificate holder did not previously disclose the conviction or
17 plea and the fifth anniversary of the date the person successfully
18 completed community supervision or parole has not occurred.

19 (c) A person is not eligible for an initial license or
20 certificate or for reinstatement or endorsement of a license to
21 practice nursing or a certificate as a nurse aide in this state
22 before the fifth anniversary of the date the person successfully
23 completed and was dismissed from community supervision or parole
24 for an offense described by Subsection (a).

25 SECTION 13. Sections 301.454(a), (c), and (e), Occupations
26 Code, are amended to read as follows:

27 (a) Except in the case of a temporary suspension authorized

1 under Section 301.455 or an action taken in accordance with an
2 agreement between the board and a license or certificate holder,
3 the board may not initiate a disciplinary action relating to a
4 license or certificate unless:

5 (1) the board has served notice to the license or
6 certificate holder of the facts or conduct alleged to warrant the
7 intended action; and

8 (2) the license or certificate holder has been given
9 an opportunity, in writing or through an informal meeting, to show
10 compliance with all requirements of law for the retention of the
11 license or certificate.

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

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

15 (2) refuse to issue a license, certificate, or
16 temporary permit;

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

18 (4) suspend or revoke the person's license, certificate, or permit.
19

20 (e) Notwithstanding Subsection (a), a person is not
21 entitled to a hearing on a refusal to renew a license or certificate
22 if the person:

23 (1) fails to submit a renewal application; or

24 (2) submits an application that:

25 (A) is incomplete;

26 (B) shows on its face that the person does not
27 meet the renewal requirements; or

1 (C) is not accompanied by the correct fee.

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

4 Sec. 301.455. TEMPORARY LICENSE OR CERTIFICATE SUSPENSION
5 OR RESTRICTION.

6 SECTION 15. Sections 301.455(a) and (b), Occupations Code,
7 are amended to read as follows:

8 (a) The license of a nurse or the certificate of a nurse aide
9 shall be temporarily suspended or restricted on a determination by
10 a majority of the board or a three-member committee of board members
11 designated by the board that, from the evidence or information
12 presented, the continued practice of the nurse or nurse aide would
13 constitute a continuing and imminent threat to the public welfare.

14 (b) A license or certificate may be temporarily suspended or
15 restricted under this section without notice or hearing on the
16 complaint if:

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

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

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

25 Sec. 301.457. COMPLAINT AND INVESTIGATION RELATED TO
26 NURSES.

27 SECTION 17. Subchapter J, Chapter 301, Occupations Code, is

1 amended by adding Section 301.4571 to read as follows:

2 Sec. 301.4571. COMPLAINT AND INVESTIGATION RELATED TO NURSE
3 AIDES. (a) The board or any person may initiate a proceeding under
4 this subchapter by filing with the board a complaint against a nurse
5 aide. The complaint must be in writing and signed by the
6 complainant.

7 (b) Except as otherwise provided by this section, the board
8 or a person authorized by the board shall conduct each
9 investigation. Each complaint against a nurse aide that requires a
10 determination of competency shall be reviewed by a board member,
11 consultant, or employee with a nursing background the board
12 considers sufficient.

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

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

16 (2) shall make a timely and appropriate preliminary
17 investigation of the complaint; and

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

19 (d) After any preliminary investigation to determine the
20 identity of the subject of the complaint, unless it would
21 jeopardize an investigation, the board shall notify the nurse aide
22 that a complaint has been filed and the nature of the complaint. If
23 the investigation reveals probable cause to take further
24 disciplinary action, the board shall either attempt an informal
25 disposition of the complaint or file a formal charge against the
26 nurse aide stating the provision of this chapter or board rule that
27 is alleged to have been violated and a brief description of each act

1 or omission that constitutes the violation.

2 (e) The board shall conduct an investigation of the
3 complaint to determine:

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

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

9 (f) In making a determination under Subsection (e), the
10 board shall review the evidence to determine the extent to which a
11 deficiency in care by the nurse aide was the result of deficiencies
12 in the nurse aide's judgment, knowledge, training, or skill rather
13 than other factors beyond the nurse aide's control. A determination
14 that a deficiency in care is attributable to a nurse aide must be
15 based on the extent to which the nurse aide's conduct was the result
16 of a deficiency in the nurse aide's judgment, knowledge, training,
17 or skill.

18 (g) If the board determines after investigating a complaint
19 under Subsection (e) that there is reason to believe that a nurse
20 aide's deficiency in care was the result of a factor beyond the
21 nurse aide's control, the board shall report that determination to
22 the patient safety committee at the facility where the nurse aide's
23 deficiency in care occurred or, if the facility does not have a
24 patient safety committee, to the chief nursing officer.

25 (h) The board and the Department of Aging and Disability
26 Services shall share investigation information, including files,
27 reports, witness lists, findings, and any other pertinent

1 information, related to the investigation of a nurse aide by the
2 board or department.

3 SECTION 18. Sections 301.458(a) and (c), Occupations Code,
4 are amended to read as follows:

5 (a) Unless there is an agreed disposition of the complaint
6 under Section 301.463, and if probable cause is found under Section
7 301.457(e)(2) or Section 301.4571(e)(2), the board or the board's
8 authorized representative shall initiate proceedings by filing
9 formal charges against the nurse or nurse aide.

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

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

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

16 SECTION 20. Section 301.460(a), Occupations Code, is
17 amended to read as follows:

18 (a) Except for good cause shown for delay and subject to any
19 other privilege or restriction set forth by statute, rule, or legal
20 precedent, the board shall, not later than the 30th day after the
21 date the board receives a written request from a license or
22 certificate holder who is the subject of a formal charge filed under
23 Section 301.458 or from the license or certificate holder's counsel
24 of record, provide the license or certificate holder with access
25 to:

26 (1) all known exculpatory information in the board's
27 possession; and

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

4 SECTION 21. Section 301.462, Occupations Code, is amended
5 to read as follows:

6 Sec. 301.462. VOLUNTARY SURRENDER OF LICENSE OR
7 CERTIFICATE. (a) The board may revoke a nurse's license without
8 formal charges, notice, or opportunity of hearing if the nurse
9 voluntarily surrenders the nurse's license to the board and
10 executes a sworn statement that the nurse does not desire to be
11 licensed.

12 (b) The board may revoke a nurse aide's certificate without
13 formal charges, notice, or opportunity of hearing if the nurse aide
14 voluntarily surrenders the nurse aide's certificate to the board
15 and executes a sworn statement that the nurse aide does not desire
16 to be certified.

17 SECTION 22. Section 301.464(b), Occupations Code, is
18 amended to read as follows:

19 (b) Rules adopted under this section must:

20 (1) provide the complainant and the license or
21 certificate holder an opportunity to be heard; and

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

25 SECTION 23. Section 301.466, Occupations Code, is amended
26 to read as follows:

27 Sec. 301.466. CONFIDENTIALITY. (a) A complaint and

1 investigation concerning a nurse or nurse aide under this
2 subchapter and all information and material compiled by the board
3 in connection with the complaint and investigation are:

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

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

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

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

14 (2) a nursing licensing, certifying, or disciplinary
15 board in another jurisdiction;

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

18 (4) a law enforcement agency; or

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

21 (c) The filing of formal charges against a nurse or nurse
22 aide by the board, the nature of those charges, disciplinary
23 proceedings of the board, and final disciplinary actions, including
24 warnings and reprimands, by the board are not confidential and are
25 subject to disclosure in accordance with Chapter 552, Government
26 Code.

27 SECTION 24. Sections 301.467(a) and (b), Occupations Code,

1 are amended to read as follows:

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

3 (1) a license to practice professional nursing or
4 vocational nursing to a person whose license has been revoked,
5 suspended, or surrendered; or

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

8 (b) An application to reinstate a revoked license or
9 certificate:

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

12 (2) must be made in the manner and form the board
13 requires.

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

17 (a) The board may determine that an order denying a license
18 or certificate application or suspending a license or certificate
19 be probated.

20 (a-1) A person subject to a probation order under Subsection
21 (a) related to a license shall conform to each condition the board
22 sets as the terms of probation, including a condition:

23 (1) limiting the practice of the person to, or
24 excluding, one or more specified activities of professional nursing
25 or vocational nursing; or

26 (2) requiring the person to submit to supervision,
27 care, counseling, or treatment by a practitioner designated by the

1 board.

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

5 (1) limiting the practice of the person to, or
6 excluding, one or more specified activities performed by nurse
7 aides; or

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

11 (c) At any time while the person remains subject to the
12 probation order, the board may hold a hearing and rescind the
13 probation and enforce the board's original action in denying or
14 suspending the license or certificate. The hearing shall be called
15 by the presiding officer of the board, who shall issue a notice to
16 be served on the person or the person's counsel not later than the
17 20th day before the date scheduled for the hearing that:

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

19 (2) contains the charges or complaints against the
20 probationer.

21 SECTION 26. Section 301.469, Occupations Code, is amended
22 to read as follows:

23 Sec. 301.469. NOTICE OF FINAL ACTION. If the board takes a
24 final disciplinary action, including a warning or reprimand,
25 against a nurse or nurse aide under this subchapter, the board shall
26 immediately send a copy of the board's final order to the nurse or
27 nurse aide and to the last known employer of the nurse or nurse

1 aide.

2 SECTION 27. Section 301.470, Occupations Code, is amended
3 to read as follows:

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

9 (b) The amount of a refund ordered as provided in an
10 agreement resulting from an informal settlement conference may not
11 exceed the amount the consumer paid to a nurse or nurse aide for a
12 service regulated by this chapter or the actual amount stolen or
13 defrauded from a patient by the nurse or nurse aide. The board may
14 not require payment of other damages or estimate harm in a refund
15 order.

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

19 (a-1) If it appears to the board that a person who is not
20 certified as a nurse aide under this chapter is violating this
21 chapter, a rule adopted under this chapter, or another state
22 statute or rule relating to the practice of a nurse aide and the
23 board determines that the unauthorized activity constitutes a
24 clear, imminent, or continuing threat to the public health and
25 safety, the board may:

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

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

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

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

7 (2) state the acts or practices alleged to be an
8 unauthorized activity and require the person immediately to cease
9 and desist from the unauthorized activity; and

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

12 SECTION 29. Section 301.552, Occupations Code, is amended
13 to read as follows:

14 Sec. 301.552. MONITORING OF LICENSE OR CERTIFICATE HOLDER.
15 The board by rule shall develop a system for monitoring the
16 compliance of license and certificate holders with the requirements
17 of this chapter. Rules adopted under this section must include
18 procedures to:

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

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

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

26 (1) "Nurse aide registry" means a list of certified
27 nurse aides maintained and administered by the Texas Board of

1 Nursing as provided by Chapter 301, Occupations Code, under the
2 oversight of the [Texas] Department of Aging and Disability [Human
3 Services and maintained in compliance with [of nurse aides under]
4 the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No.
5 100-203).

6 (3) "Facility" means:

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

10 (B) an assisted living facility licensed by the
11 department [~~Texas Department of Human Services~~]

12 (C) a home and community support services agency
13 licensed under Chapter 142;

14 (D) an adult day care facility licensed by the
15 department [~~Texas Department of Human Services~~]
16 Human Resources Code;

17 (E) a facility for persons with mental
18 retardation licensed under Chapter 252;

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

21 (G) a facility that provides mental health
22 services and that is operated by or contracts with the [~~Texas~~
23 Department of State [~~Mental~~] Health Services [~~and Mental~~
24 ~~Retardation~~];

25 (H) a local mental health or mental retardation
26 authority designated under Section 533.035; or

27 (I) a person exempt from licensing under Section

1 142.003(a)(19).

2 (6) "Department" means the Department of Aging and
3 Disability Services.

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

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

8 (b) The department shall oversee the nurse aide registry
9 administered and maintained by the Texas Board of Nursing under
10 Chapter 301, Occupations Code, and under the interagency contract
11 between the department, the Health and Human Services Commission,
12 and the board.

13 (c) The department shall place any finding of abuse,
14 neglect, or exploitation by a certified nurse aide in the registry
15 and in the employee misconduct registry maintained under Chapter
16 253.

17 SECTION 32. (a) Not later than October 1, 2009, the
18 executive director of the Texas Board of Nursing shall appoint the
19 members to the nurse aide advisory committee established by Section
20 301.1596, Occupations Code, as added by this Act.

21 (b) Not later than January 1, 2010, the Texas Board of
22 Nursing, the Health and Human Services Commission, and the
23 Department of Aging and Disability Services shall enter an
24 interagency contract as required by Section 301.168, Occupations
25 Code, as added by this Act.

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

1 (1) establish the qualifications for issuance of a
2 certificate of registration and renewal of registration as a
3 certified nurse aide; and

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

6 (d) Not later than May 1, 2010, the executive commissioner
7 of the Health and Human Services Commission shall adopt the rules
8 necessary to implement the changes in law made by this Act.

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

20 (b) Chapter 301, Occupations Code, as amended by this Act,
21 applies only to the issuance of a certificate of registration or
22 renewal of certificate of registration as a certified nurse aide
23 and the inclusion or renewal of inclusion on the nurse aide registry
24 under Chapter 250, Health and Safety Code, as amended by this Act,
25 on or after September 1, 2010.

26 (c) Except as provided by Subsection (d), an application for
27 issuance of a certificate of registration or renewal of certificate

1 of registration as a certified nurse aide under Chapter 301,
2 Occupations Code, as amended by this Act, and the inclusion or
3 renewal of inclusion on the nurse aide registry under Chapter 250,
4 Health and Safety Code, as amended by this Act, before the effective
5 date of this Act is covered by the law in effect immediately before
6 that date, and that law is continued in effect for that purpose.

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

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