

By: Nelson
(King of Taylor, Naishtat)

S.B. No. 193

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. Section 301.207, Occupations Code, is amended to read as follows:

Sec. 301.207. CONFIDENTIALITY OF ~~[HEALTH]~~ INFORMATION PROVIDED FOR LICENSURE. The following information ~~[Information regarding a person's diagnosis or treatment for a physical condition, mental condition, or chemical dependency]~~ that a ~~[the]~~ person submits to the board for a petition for a declaratory order of eligibility for a license or for an application for an initial license or a license renewal under this chapter is confidential to the same extent information collected on a nurse as part of an investigation of a complaint is confidential under Section 301.466:

(1) information, including diagnosis and treatment, regarding a person's physical or mental condition, intemperate use of drugs or alcohol, or chemical dependency;

(2) information regarding a person's criminal history;
and

(3) any other information in the petition for declaratory order of eligibility.

SECTION 2. Subsection (e), Section 301.261, Occupations Code, is amended to read as follows:

(e) The board by rule shall permit a person whose license is

1 on inactive status and who was in good standing with the board on
2 the date the license became inactive [~~is 65 years or older~~] to use,
3 as applicable, the title "Registered Nurse Retired," "R.N.
4 Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse
5 Retired," "L.V.N. Retired," or "V.N. Retired" or another
6 appropriate title approved by the board.[""]

7 SECTION 3. Subsection (b), Section 301.352, Occupations
8 Code, is amended to read as follows:

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

12 (1) that the act or omission the nurse refused to
13 engage in was not:

14 (A) [~~not~~] conduct reportable to the board under
15 Section 301.403;

16 (B) a minor incident; or

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

18 or

19 (2) that:

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

23 (B) the person:

24 (i) rescinds any disciplinary or
25 discriminatory action taken against the nurse;

26 (ii) compensates the nurse for lost wages;

27 and

1 (iii) restores to the nurse any lost
2 benefits.

3 SECTION 4. Subsection (j), Section 301.4521, Occupations
4 Code, is amended to read as follows:

5 (j) The results of an evaluation under this section are:

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

8 (2) not subject to disclosure by discovery, subpoena,
9 or other means of legal compulsion for release to anyone, except
10 that the results may be:

11 (A) introduced as evidence in a proceeding before
12 the board or a hearing conducted by the State Office of
13 Administrative Hearings under this chapter; ~~[or]~~

14 (B) included in the findings of fact and
15 conclusions of law in a final board order; and

16 (C) disclosed to a peer assistance program
17 approved by the board under Chapter 467, Health and Safety Code, and
18 to which the board has referred the nurse.

19 SECTION 5. Subsection (c), Section 301.455, Occupations
20 Code, is amended to read as follows:

21 (c) The State Office of Administrative Hearings shall hold a
22 preliminary hearing not later than the 17th ~~[14th]~~ day after the
23 date of the temporary suspension or restriction to determine
24 whether probable cause exists that a continuing and imminent threat
25 to the public welfare exists. The probable cause hearing shall be
26 conducted as a de novo hearing.

27 SECTION 6. Section 301.4551, Occupations Code, is amended

1 to read as follows:

2 Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR
3 ALCOHOL USE. (a) The board shall temporarily suspend the license
4 of a nurse as provided by Section 301.455 if the nurse is under a
5 board order prohibiting the use of alcohol or a drug or requiring
6 the nurse to participate in a peer assistance program, and the
7 nurse:

8 (1) tests positive for alcohol or a prohibited drug;

9 (2) refuses to comply with a board order to submit to a
10 drug or alcohol test; or

11 (3) fails to participate in the peer assistance
12 program and the program issues a letter of dismissal and referral to
13 the board for noncompliance.

14 (b) For the purposes of Section 301.455(c), proof of the
15 elements required for the board to suspend a license under this
16 section is proof that probable cause of a continuing and imminent
17 threat to the public welfare exists.

18 SECTION 7. Chapter 303, Occupations Code, is amended by
19 adding Section 303.012 to read as follows:

20 Sec. 303.012. ERROR CLASSIFICATION SYSTEM. (a) The board
21 may develop a standardized error classification system for use by a
22 nursing peer review committee in evaluating the conduct of a nurse.
23 The board shall make the system available to the committee at no
24 cost.

25 (b) Information collected as part of an error
26 classification system is a record of the nursing peer review
27 committee and is confidential under Section 303.006.

1 (c) A nursing peer review committee may report the
2 information collected using the error classification system to the
3 board. The committee may not report to the board under this section
4 information that includes the identity of an individual nurse or
5 patient.

6 (d) Information the board receives under this section that
7 contains information identifying a specific patient, nurse, or
8 health care facility, the committee, or the sponsoring organization
9 of the committee is confidential and is not subject to disclosure
10 under Chapter 552, Government Code. The board must remove the
11 identifying information from the information before making the
12 remaining information available to the public.

13 (e) This section does not affect the obligation or authority
14 of a nursing peer review committee to disclose information under
15 Section 303.007.

16 SECTION 8. Section 301.355, Occupations Code, is repealed.

17 SECTION 9. (a) The change in law made by this Act to
18 Subsection (b), Section 301.352, Occupations Code, applies only to
19 an act or omission that occurs on or after the effective date of
20 this Act. An act or omission that occurs before the effective date
21 of this Act is covered by the law in effect when the act or omission
22 occurred, and the former law is continued in effect for that
23 purpose.

24 (b) The change in law made by this Act to Subsection (c),
25 Section 301.455, Occupations Code, applies only to a temporary
26 suspension or restriction of a license issued by the Texas Board of
27 Nursing that is imposed on or after the effective date of this Act.

1 A temporary suspension or restriction imposed before the effective
2 date of this Act is covered by the law in effect when the suspension
3 or restriction was imposed, and the former law is continued in
4 effect for that purpose.

5 (c) The change in law made by this Act to Section 301.4551,
6 Occupations Code, applies only to a violation of an order issued by
7 the Texas Board of Nursing that occurs on or after the effective
8 date of this Act. A violation of an order that occurs before the
9 effective date of this Act is covered by the law in effect when the
10 order was violated, and the former law is continued in effect for
11 that purpose.

12 SECTION 10. This Act takes effect September 1, 2011.