

1-1 By: Nelson S.B. No. 193
1-2 (In the Senate - Filed November 9, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 14, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 March 14, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 193 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of the practice of nursing.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Section 301.207, Occupations Code, is amended to
1-13 read as follows:

1-14 Sec. 301.207. CONFIDENTIALITY OF ~~[HEALTH]~~ INFORMATION
1-15 PROVIDED FOR LICENSURE. The following information [Information
1-16 regarding a person's diagnosis or treatment for a physical
1-17 condition, mental condition, or chemical dependency] that a [the]
1-18 person submits to the board for a petition for a declaratory order
1-19 of eligibility for a license or for an application for an initial
1-20 license or a license renewal under this chapter is confidential to
1-21 the same extent information collected on a nurse as part of an
1-22 investigation of a complaint is confidential under Section 301.466:

1-23 (1) information, including diagnosis and treatment,
1-24 regarding a person's physical or mental condition, intemperate use
1-25 of drugs or alcohol, or chemical dependency;

1-26 (2) information regarding a person's criminal history;
1-27 and

1-28 (3) any other information in the petition for
1-29 declaratory order of eligibility.

1-30 SECTION 2. Subsection (e), Section 301.261, Occupations
1-31 Code, is amended to read as follows:

1-32 (e) The board by rule shall permit a person whose license is
1-33 on inactive status and who was in good standing with the board on
1-34 the date the license became inactive [is 65 years or older] to use,
1-35 as applicable, the title "Registered Nurse Retired," "R.N.
1-36 Retired," "Licensed Vocational Nurse Retired," "Vocational Nurse
1-37 Retired," "L.V.N. Retired," or "V.N. Retired" or another
1-38 appropriate title approved by the board. ["]

1-39 SECTION 3. Subsection (b), Section 301.352, Occupations
1-40 Code, is amended to read as follows:

1-41 (b) An act by a person under Subsection (a) does not
1-42 constitute a violation of this section if a nursing peer review
1-43 committee under Chapter 303 determines:

1-44 (1) that the act or omission the nurse refused to
1-45 engage in was not:

1-46 (A) ~~[not]~~ conduct reportable to the board under
1-47 Section 301.403;

1-48 (B) a minor incident; or

1-49 (C) a violation of this chapter or a board rule;

1-50 or

1-51 (2) that:

1-52 (A) the act or omission in which the nurse
1-53 refused to engage was conduct reportable to the board, a minor
1-54 incident, or a violation of this chapter or a board rule; and

1-55 (B) the person:

1-56 (i) rescinds any disciplinary or
1-57 discriminatory action taken against the nurse;

1-58 (ii) compensates the nurse for lost wages;

1-59 and

1-60 (iii) restores to the nurse any lost
1-61 benefits.

1-62 SECTION 4. Subsection (j), Section 301.4521, Occupations
1-63 Code, is amended to read as follows:

2-1 (j) The results of an evaluation under this section are:
2-2 (1) confidential and not subject to disclosure under
2-3 Chapter 552, Government Code; and

2-4 (2) not subject to disclosure by discovery, subpoena,
2-5 or other means of legal compulsion for release to anyone, except
2-6 that the results may be:

2-7 (A) introduced as evidence in a proceeding before
2-8 the board or a hearing conducted by the State Office of
2-9 Administrative Hearings under this chapter; ~~[or]~~

2-10 (B) included in the findings of fact and
2-11 conclusions of law in a final board order; and

2-12 (C) disclosed to a peer assistance program
2-13 approved by the board under Chapter 467, Health and Safety Code, and
2-14 to which the board has referred the nurse.

2-15 SECTION 5. Subsection (c), Section 301.455, Occupations
2-16 Code, is amended to read as follows:

2-17 (c) The State Office of Administrative Hearings shall hold a
2-18 preliminary hearing not later than the 17th [~~14th~~] day after the
2-19 date of the temporary suspension or restriction to determine
2-20 whether probable cause exists that a continuing and imminent threat
2-21 to the public welfare exists. The probable cause hearing shall be
2-22 conducted as a de novo hearing.

2-23 SECTION 6. Section 301.4551, Occupations Code, is amended
2-24 to read as follows:

2-25 Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR
2-26 ALCOHOL USE. (a) The board shall temporarily suspend the license
2-27 of a nurse as provided by Section 301.455 if the nurse is under a
2-28 board order prohibiting the use of alcohol or a drug or requiring
2-29 the nurse to participate in a peer assistance program, and the
2-30 nurse:

2-31 (1) tests positive for alcohol or a prohibited drug;

2-32 (2) refuses to comply with a board order to submit to a
2-33 drug or alcohol test; or

2-34 (3) fails to participate in the peer assistance
2-35 program and the program issues a letter of dismissal and referral to
2-36 the board for noncompliance.

2-37 (b) For the purposes of Section 301.455(c), proof of the
2-38 elements required for the board to suspend a license under this
2-39 section is proof that probable cause of a continuing and imminent
2-40 threat to the public welfare exists.

2-41 SECTION 7. Chapter 303, Occupations Code, is amended by
2-42 adding Section 303.012 to read as follows:

2-43 Sec. 303.012. ERROR CLASSIFICATION SYSTEM. (a) The board
2-44 may develop a standardized error classification system for use by a
2-45 nursing peer review committee in evaluating the conduct of a nurse.
2-46 The board shall make the system available to the committee at no
2-47 cost.

2-48 (b) Information collected as part of an error
2-49 classification system is a record of the nursing peer review
2-50 committee and is confidential under Section 303.006.

2-51 (c) A nursing peer review committee may report the
2-52 information collected using the error classification system to the
2-53 board. The committee may not report to the board under this section
2-54 information that includes the identity of an individual nurse or
2-55 patient.

2-56 (d) Information the board receives under this section that
2-57 contains information identifying a specific patient, nurse, or
2-58 health care facility, the committee, or the sponsoring organization
2-59 of the committee is confidential and is not subject to disclosure
2-60 under Chapter 552, Government Code. The board must remove the
2-61 identifying information from the information before making the
2-62 remaining information available to the public.

2-63 (e) This section does not affect the obligation or authority
2-64 of a nursing peer review committee to disclose information under
2-65 Section 303.007.

2-66 SECTION 8. Section 301.355, Occupations Code, is repealed.

2-67 SECTION 9. (a) The change in law made by this Act to
2-68 Subsection (b), Section 301.352, Occupations Code, applies only to
2-69 an act or omission that occurs on or after the effective date of

3-1 this Act. An act or omission that occurs before the effective date
3-2 of this Act is covered by the law in effect when the act or omission
3-3 occurred, and the former law is continued in effect for that
3-4 purpose.

3-5 (b) The change in law made by this Act to Subsection (c),
3-6 Section 301.455, Occupations Code, applies only to a temporary
3-7 suspension or restriction of a license issued by the Texas Board of
3-8 Nursing that is imposed on or after the effective date of this Act.
3-9 A temporary suspension or restriction imposed before the effective
3-10 date of this Act is covered by the law in effect when the suspension
3-11 or restriction was imposed, and the former law is continued in
3-12 effect for that purpose.

3-13 (c) The change in law made by this Act to Section 301.4551,
3-14 Occupations Code, applies only to a violation of an order issued by
3-15 the Texas Board of Nursing that occurs on or after the effective
3-16 date of this Act. A violation of an order that occurs before the
3-17 effective date of this Act is covered by the law in effect when the
3-18 order was violated, and the former law is continued in effect for
3-19 that purpose.

3-20 SECTION 10. This Act takes effect September 1, 2011.

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