

- SUBJECT:** Regulating the practice of licensed vocational nursing
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 8 ayes — Capelo, Laubenberg, Coleman, Dawson, McReynolds, Naishtat, Taylor, Zedler
- 0 nays
- 1 absent — Truitt
- WITNESSES:** For — Linda Bland, Jackolyn Morgan, and Delores Thompson, Texas Association of Vocational Nurse Educators; Pam Brashears, Texas League of Vocational Nurses
- Against — None
- On — Terrie Hairston, Texas Board of Vocational Nurse Examiners; Elizabeth Sjoberg, Texas Hospital Association; (*Registered but did not testify*;) Joyce Adams, Ph.D., R.N., Board of Vocational Nurse Examiners; James “Dusty” Johnston and Katherine Thomas, Board of Nurse Examiners; James Willmann, Texas Nurses’ Association
- BACKGROUND:** The Board of Nurse Examiners (BNE) regulates registered nurses (RNs), and the Board of Vocational Nurse Examiners (BVNE) regulates licensed vocational nurses (LVNs). Occupations Code, ch. 302 governs LVNs and the BVNE, and ch. 303 contains nursing peer-review provisions. Unlike RNs, who are licensed to practice generally, LVNs work under the direction of their employers, such as nursing homes or clinics.
- DIGEST:** CSHB 311 would rename Occupations Code, ch. 302 the Licensed Vocational Nursing Practice Act. It would authorize the BVNE to regulate the practice of vocational nursing, establish standards of professional conduct for LVNs, and enforce rules consistent with the statute. It would prohibit anyone other than a licensed LVN from practicing vocational nursing.

The bill would create a 14-member advisory committee of specified nursing professionals and people recommended by relevant agencies and associations to advise the BVNE in defining the scope of practice of vocational nursing. The BVNE would have to appoint committee members as soon as practicable after the bill's effective date.

CSHB 311 would establish confidentiality for complaints against and investigations of LVNs. It would specify that a LVN must practice under the supervision of a RN, MD, or other designated health-care provider, and it would prohibit a LVN from delegating tasks to someone else. The bill would protect a LVN from disciplinary action for refusing to engage in an act for which he or she could be disciplined or that was a violation of the statute. It would protect a person who reported malpractice, negligence, or character issues to the board from civil liability, suspension, termination, or other disciplinary action. It would amend references in the peer-review statute from RNs to "nursing" so that the statute also would apply to LVNs.

A hospital, nursing home, or other employer of LVNs would have to report to the board the names of LVNs whose employment was terminated or who resigned to avoid termination for engaging in specific fraudulent or deceptive practices. The appropriate state licensing agency could take action against a regulated person who failed to report such information, but the person would not be liable for a civil action.

Occupations Code, ch. 302 would not apply to some kinds of nursing care, such as care provided by a friend for no charge, provided by prayer or spiritual means, care by nursing student, or provided during a disaster under the state management plan. Nursing licensing requirements would not apply to service providers under the Health and Human Services Commission's voucher payment program for people with disabilities.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

The shortage of RNs places more responsibility on LVNs, who are being used in ever increasing capacities. The health-care work environment for LVNs is changing constantly, and these nurses sometimes are asked to perform tasks outside their scope of practice.

Current law requires only that people calling themselves LVNs actually be licensed as such. CSHB 311 would authorize the BVNE to decide what is within the scope of practice for LVNs, to guide LVNs and their employers accordingly, and to protect the profession from unlicensed people engaging in those acts. The BVNE can sanction LVN imposters under current law. Under CSHB 311, it also could sanction anyone who practiced vocational nursing without a license, even if the person never claimed to be a LVN.

The bill would grant LVNs “safe harbor” legal protections that already are available to RNs, physicians, and other health-care professionals. Safe harbor laws would allow a LVN to refuse to perform a task for which he or she had not been trained, without being disciplined for refusing to do so. Through a whistleblower provision, the bill also would protect LVNs in advocating for high-quality patient care. A nurse could report negligence or malpractice to the BVNE without being fired, sued, or otherwise punished. The effect of this provision would be to ensure professional integrity for the vocational nursing profession and to improve protection of patients.

Like any practice act, CSHB 311 would amount to a consumer protection act, as it would allow the BVNE to educate consumers and patients about the appropriate scope of practice for LVNs. Patients and their families deserve to know this information when making decisions about health care.

The BVNE, in defining scope of practice, could give clarity to nurse educators as to what they should be teaching future nurses. As long as the scope of practice remains undefined, nursing schools are uncertain about what basic competencies universally are expected of LVNs.

Both the BNE and BVNE are scheduled for sunset review in 2005, including a review of their enabling statutes. That process will provide an appropriate forum for discussing whether and how to integrate nursing practices, should the Legislature wish to do so.

In response to concerns that the BVNE might limit LVN practice unduly, causing financial distress to hospitals and other health-care facilities, the bill would create an advisory committee of nursing professionals, employers, and other health-care industry representatives to advise the BVNE on scope-of-practice decisions. The committee’s advice would prevent the board from

making decisions that would affect vital stakeholders adversely or allow LVNs to avoid unpleasant, though legitimate, tasks.

Existing peer-review statutes require the BNE to consult with the BVNE in adopting rules on this issue, ensuring representation of LVNs. Separate peer-review rules promulgated by each board would be inefficient for employers and agencies who must comply with the rules.

**OPPONENTS
SAY:**

RNs and LVNs should be regulated under a single practice act. The Nursing Practice Act has stronger protections for RNs than CSHB 311 would provide for LVNs. For example, the bill's whistleblower language would protect only those who reported negligence to the BVNE. However, LVNs more often need to report negligence to an employer, health-care facility manager, or other entity, and CSHB 311 would not protect LVNs in those circumstances. As long as the two categories of nurses are governed by separate practice acts, the statutes can be amended separately and incongruously, leading to further disparities between RNs and LVNs.

Defining the scope of practice could give unscrupulous LVNs the grounds to refuse more menial tasks, such as changing a bed, that are not explicitly within their scope of practice.

The bill would not amend the definition of "board" in Occupations Code, ch. 303, concerning peer review, although it would bring LVNs under the statute's governance. Since the chapter's references to board are to the BNE, the BVNE would not have the authority it needs to adopt rules to implement these provisions.

NOTES:

The committee substitute would change the bill as introduced by prohibiting LVNs from delegating tasks; specifying that LVNs must practice under a RN or medical doctor; creating the practice advisory committee; establishing confidentiality for investigations; revising the safe harbor, peer review, and reporting provisions to be consistent with the Nursing Practice Act; and adding language regarding the HHSC voucher program.

The companion bill, SB 241 by Shapleigh, has been referred to the Senate Health and Human Services Committee.