

CHAPTER 570

S.B. No. 1160

AN ACT

relating to the regulation of professional nursing, the establishment of professional nursing peer review, and certain professional nursing reporting procedures; providing a penalty.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 4525, Revised Statutes, is amended to read as follows:

Art. 4525. DISCIPLINARY PROCEEDINGS. (a) The board of nurse examiners may refuse to admit persons to its examinations, may refuse to issue a license or certificate of registration or to issue a certificate of re-registration, may refuse to issue a temporary permit, may issue a warning or reprimand *with or without stipulations*, may suspend for any period not to exceed 2 years, or may revoke the license or certificate of any practitioner of professional nursing, for any of the following reasons:

(1) The violation of any of the provisions of this law, any rule, regulation not inconsistent with this law, or order issued hereinunder.

(2) Is guilty of fraud or deceit in procuring or attempting to procure a license to practice professional nursing.

(3) Conviction of a crime of the grade of felony, or a crime of lesser grade which involves moral turpitude, *or any conduct resulting in the revocation of probation imposed pursuant to such conviction.*

(4) The use of any nursing license, certificate, diploma or permit, or transcript of such license, certificate, diploma or permit, which has been fraudulently purchased, issued, counterfeited, or materially altered.

(5) The impersonation of, or the acting as a proxy for, another in any examination required by law to obtain a license to practice professional nursing.

(6) Aiding or abetting, directly or indirectly, or in any manner whatsoever, any unlicensed person in connection with the unauthorized practice of professional nursing.

(7) Revocation, suspension, or denial of *or any other action relating to* the license to practice nursing in another jurisdiction. Certified copy of the order of denial, suspension, [~~or~~] revocation, *or any other action* shall be conclusive evidence thereof.

(8) Intemperate use of alcohol or drugs if the nurse knows or should know that the effects of that use endangers or could endanger patients. Intemperate use includes but is not limited to practicing professional nursing or being on duty or call while under the influence of alcohol or drugs.

(9) Unprofessional or dishonorable conduct which, in the opinion of the board, is likely to deceive, defraud, or injure patients or the public.

(10) Adjudication of mental incompetency.

(11) Lack of fitness to practice by reason of mental or physical health that could result in injury to patients or the public.

(12) *Failing to care adequately for patients or to conform to the minimum standards of acceptable professional nursing practice that, in the opinion of the board, exposes a patient or other person unnecessarily to risk of harm.*

(b) Proceedings under this article [~~Article~~] shall be begun by filing a written complaint [~~charges~~] with the board of nurse examiners [~~in writing and under oath~~]. Such complaint [~~charges~~] may be made by any person or filed by the board on its own initiative. *Unless it would jeopardize an investigation, the board shall notify the registered nurse that a complaint has been filed and the nature of the complaint* [~~persons~~]. An information file about each complaint filed relating to a licensee shall be maintained by the board. If a written complaint is filed with the board relating to a licensee, the board at least as frequently as quarterly and until final disposition of the complaint, shall notify the *party that filed the complaint* [~~parties to the complaint~~] of the status of the file [~~complaint~~] unless [~~the~~] notice would jeopardize an [~~underecover~~] investigation. The board shall make a *timely and appropriate* [~~such~~] preliminary investigation of the complaint [~~charges as it deems necessary~~] and may issue a warning or reprimand to the person *against whom the complaint was filed* [~~charged~~]. *If the investigation reveals probable cause to take further disciplinary action, the board shall file formal charges against the registered nurse stating the provisions of this chapter or the board's rules that are alleged to have been violated and a brief description of the acts or omissions that constituted the violation.* If the board proposes to refuse to admit a person to its examination, to refuse to issue a temporary permit, license, certificate of registration, certificate of re-registration, or to suspend or revoke a person's permit, license, or certificate, the person is entitled to a hearing before the board. *The hearing may be before a subcommittee of the board, a majority of which is composed of registered nurses. The person shall on request be granted a hearing before the entire board.* Proceedings for a [~~these~~] disciplinary action [~~actions~~] are governed by the Administrative Procedure and Texas Register Act, [~~as amended~~] (Article 6252-13a, Vernon's Texas Civil Statutes). *The board may assess a person found to have violated any provision of this chapter the administrative costs of conducting a hearing to determine that violation.* If a licensed professional nurse voluntarily surrenders his or her [~~said~~] license to the board and executes a sworn statement that he or she no longer desires to be licensed, the board may revoke his or her [~~said~~] license without the necessity of formal charges, notice, or opportunity of hearing.

(c) Any person whose license or certificate to practice professional nursing has been revoked or suspended by the board or who has been otherwise disciplined by the board may take an appeal to any of the district courts in the county of residence, but the decision of the board shall not be enjoined or stayed except on application to such district courts after notice to the board. Upon application the board may reissue a license or certificate to practice professional nursing to a person whose license has been revoked or suspended but such application, in case of revocation, shall not be made prior to one year after the revocation was issued and shall be made in such manner and form as the board may require.

(d) The board shall have the right and may, upon majority vote, rule that the order denying an application for a license or suspending any license be probated so long as the probated practitioner conforms to such orders and rules as the board may set out in the terms of probation, *including, but not limited to, limiting the practice of the person to, or by excluding, one or more specified activities of professional nursing or requiring the person to submit to supervision, care, counselling, or treatment of a practitioner designated by the board.* The board, at the time of probation, shall set out the period of time which shall constitute the probationary period; provided further that the board may at any time while the probationer remains on probation hold a hearing and upon majority vote rescind the probation and enforce the board's original action in denying or suspending such license. The said hearing to rescind the probation shall be called by the president of the board who shall cause to be issued a notice setting the time and place for the hearing and containing the charges or complaints against the probationer, said notice to be served on the probationer or his or her counsel at least 20 days prior to the time set for the hearing. Notice shall be sufficient if sent by registered or certified mail to the person charged at the *person's most recent address as shown in the records of the*

board [~~address shown on his or her most recent application for certificate of registration or re-registration~~].

(e) The board of nurse examiners is charged with the duty of aiding in the enforcement of the provisions of this chapter, and may retain legal counsel to represent the board, but prior to retaining outside legal counsel, the board shall request the attorney general to perform such services and may only retain outside counsel if the attorney general so certifies to the board that the attorney general cannot provide such services. The board shall have the power to issue subpoenas, compel the attendance of witnesses, administer oaths to persons giving testimony at hearings, and cause the prosecution of all persons violating any provisions of this chapter. It shall keep a record of all its proceedings and make an annual report to the Governor. Any member of the board may present to a prosecuting officer complaints relating to violations of any of the provisions of this chapter, and the board through its members, officers, counsel, or agents shall assist in the trial of any cases involving alleged violation of this chapter, subject to the control of the prosecuting officers. The Attorney General is directed to render such legal assistance as may be necessary in enforcing and making effective the provisions of this chapter; provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

(f) *Any person, corporation, or other entity, however organized, shall respond promptly and fully to any request for information by the board and to any subpoena issued by the board. No such request or subpoena may be refused, denied, or resisted except on the grounds that such request or subpoena calls for information within the attorney/client privilege. No other privilege shall apply to proceedings of the board. All subpoenas issued at the request of the board may be served either personally by a board investigator, by certified mail, or in any other manner authorized by law. The board may pay a reasonable fee for photocopies subpoenaed at the board's request not to exceed the amount the board charges for copies of its records. The board shall protect, to the extent possible, the identity of patients named in information received by the board.*

(g) *A complaint and investigation concerning a registered nurse under this article and all information and materials compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline except that this information may be disclosed to:*

- (1) *persons involved with the board in a disciplinary action against the nurse;*
- (2) *professional nursing licensing or disciplinary boards in other jurisdictions;*
- (3) *peer assistance programs approved by the board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Article 5561c-3, Vernon's Texas Civil Statutes);*
- (4) *law enforcement agencies; and*
- (5) *persons engaged in bona fide research, if all individual-identifying information has been deleted.*

(h) *The filing of formal charges against a registered nurse by the board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).*

(i) *If the board takes a final disciplinary action, including a warning or reprimand, against a registered nurse under this article, the board shall immediately send a copy of the board's final order to the nurse and to the last known employer of the nurse.*

SECTION 2. Title 71, Revised Statutes, is amended by adding Article 4525a to read as follows:

Art. 4525a. PROFESSIONAL NURSE REPORTING

Sec. 1. Each registered nurse having reasonable cause to suspect that a registered nurse has exposed or is likely to expose a patient or other person unnecessarily to a risk of harm because of unprofessional conduct, failure to care adequately for a patient, failure to conform to the minimum standards of acceptable professional nursing practice, or impaired status shall report in a signed, written report to the board the name of the nurse committing the violation or suspected violation and any other pertinent information within the nurse's knowledge as the board may require. A registered nurse without personal knowledge of the nurse's actions is not required to report under this section if she or he has reasonable cause to believe the nurse has already been reported.

Sec. 2. (a) Each hospital, health science center, nursing home, home health agency, other health-care facility, state agency, political subdivision, school of professional nursing, temporary nursing service, or person that employs, hires, or contracts for the services of registered nurses that terminates, suspends, or takes other substantive disciplinary action as defined by the board against a registered nurse because a patient or other person was exposed or is likely to be exposed unnecessarily to a risk of harm because of unprofessional conduct, failure to care adequately for a patient, failure to conform to the minimum standards of acceptable professional nursing practice, or impaired status shall report in writing to the board the name of the nurse and such other pertinent information within the knowledge of the facility, agency, school, or person.

(b) Each hospital, nursing home, health science center, home health agency, other health-care facility, state agency, political subdivision, school of professional nursing, temporary nursing service, or person that regularly employs, hires, or otherwise contracts for the services of 10 or more registered nurses shall develop a written plan for identifying and reporting registered nurses in its service who expose or are likely to expose patients or other persons unnecessarily to a risk of harm because of unprofessional conduct, failure to care adequately for a patient, failure to conform to the minimum standards of acceptable professional nursing practice, or impaired status. The plan must include an appropriate process for the review of any incident reportable under this section by a professional nursing peer review committee established and operated under Article 4525b, Revised Statutes, and for the affected nurse to submit rebuttal information to that committee.

(c) The requirement that a report to the board be reviewed by a professional nursing peer review committee applies only to a required report, and review by the peer review committee is only advisory. The requirement may not be construed as subjecting an employer's or other person's administrative decision to discipline a registered nurse to the peer review process or as preventing an employer or other person from taking disciplinary action before review by the peer review committee is conducted. The review by the peer review committee established under Subsection (b) of this section must include a determination as to whether or not the nurse undergoing review engaged in conduct that exposed or was likely to expose a patient or other person unnecessarily to risk of harm because of unprofessional conduct, failure to care adequately for a patient, failure to conform to the minimum standards of acceptable professional nursing practice, or impaired status. The peer review committee's determination shall be included in the report made to the board under Subsection (a) of this section.

Sec. 3. Each professional association of registered nurses or any organization that conducts a certification or accreditation program for registered nurses that expels, decertifies, or takes any other substantive disciplinary action, as defined by the board, against a registered nurse as a result of the registered nurse's failure to conform to the minimum standards of acceptable professional nursing practice shall report in writing to the board the nurse's name and such other pertinent information within the organization's knowledge as the board may require.

Sec. 4. Each state agency that surveys hospitals, nursing homes, health science centers, home health agencies, or other health-care facilities or agencies with respect

to quality of professional nursing care provided, unless otherwise expressly prohibited by state or federal law shall report in writing to the board any registered nurse that it has reason to believe exposed or is likely to expose patients or other persons unnecessarily to a risk of harm because of unprofessional conduct, failure to care adequately for a patient, failure to conform to the minimum standards of acceptable professional nursing practice, or impaired status.

Sec. 5. (a) Every insurer providing professional liability insurance to a professional nurse covering claims arising from providing or failing to provide professional nursing care shall submit to the board the report or data required by this section at the time prescribed.

(b) The report or data shall be provided with respect to a complaint filed against an insured in court, if the complaint seeks damages relating to the insured's conduct in providing or failing to provide professional nursing care, and with respect to settlement of a claim or lawsuit made on behalf of the insured.

(c) If a registered nurse named as a defendant in a claim arising from providing or failing to provide professional nursing care does not carry or is not covered by professional liability insurance or is insured by a nonadmitted carrier, the information required to be reported under this section shall be the responsibility of the registered nurse.

(d) The following report or data shall be furnished by an insurer or nurse under this section to the board within 30 days after date of receipt by the insurer of a complaint:

- (1) the name of the person against whom the claim is filed;
- (2) the policy number;
- (3) the policy limits;
- (4) a copy of the petition;
- (5) a copy of the answer; and
- (6) other pertinent data and information within the knowledge of the person required to make the report, as the board may require.

(e) The following report or data and information shall be furnished by an insurer or nurse under this section to the board within 30 days after the date of a judgment, dismissal, or settlement of suit involving the insured or nurse or settlement of any claim on behalf of the insured or nurse without the filing of a lawsuit:

- (1) the date of the judgment, dismissal, or settlement;
- (2) whether an appeal has been taken and by which party;
- (3) the amount of the settlement or judgment against the insured or nurse; and
- (4) other pertinent information within the knowledge of the person required to make the report, as the board may require.

Sec. 6. Not later than the 30th day after the date on which a person known to be a registered nurse, licensed or otherwise lawfully practicing in this state or applying to be so licensed to practice, is convicted of a felony, a misdemeanor involving moral turpitude, a violation of state or federal narcotics or controlled substance laws, or an offense involving fraud or abuse under the Medicare or Medicaid programs or after a determination by a court that adjudges or includes a finding that a registered nurse is mentally ill or mentally incompetent, whether or not the conviction, adjudication, or finding is entered, withheld, or appealed under the laws of this state, the attorney representing the state shall cause the clerk of the court of record in which the conviction, adjudication, or finding was entered to prepare and forward to the board a certified true and correct abstract of the record of the court governing the case. The abstract must include the name and address of the nurse or applicant, the nature of the offense committed, the sentence, and the judgment of the court. The board shall prepare the form of the abstract and shall distribute copies of it to all district attorney and county attorney offices within this state with appropriate instructions for preparation and filing.

Sec. 7. A registered nurse may file a signed, written report to the appropriate licensing board to report a licensed health care practitioner, agency, or facility that the nurse has reasonable cause to believe has exposed a patient to substantial risk of harm as a result of failing to provide patient care that conforms to the minimum standards of acceptable and prevailing professional practice.

Sec. 8. If a nurse required to be reported under this article is impaired or suspected of being impaired by dependency on chemicals or by mental illness, that nurse, in lieu of being reported to the board, may be reported to a peer assistance program approved by the board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Article 5561c-3, Vernon's Texas Civil Statutes).

Sec. 9. An individual, organization, agency, facility, or other person is not liable in any civil action for failure to file a report required by this article, but the appropriate state licensing agency may take action against a licensed practitioner, agency, or facility for not reporting as required.

Sec. 10. (a) An individual, organization, agency, facility, or other person that, without malice, makes a report required or permitted or reasonably believed to be required or permitted under this article or chapter is immune from civil liability and may not be subjected to any other retaliatory action as a result of making that report.

(b) An individual, organization, agency, facility, or other person named as a defendant in any civil action or subjected to any other retaliatory action as a result of filing a report required, permitted, or reasonably believed to be required or permitted under this article or chapter may file a counterclaim in any pending action or may prove a cause of action in a subsequent suit to recover defense costs, including reasonable attorney's fees and actual and punitive damages if the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.

Sec. 11. (a) No person shall suspend, terminate, or otherwise discipline or discriminate against a person reporting, without malice, under this article. A person has a cause of action against an individual, organization, agency, facility, or other person that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person for reporting under this article. The person may recover:

(1) actual damages, including damages for mental anguish even though no other injury is shown, or \$1,000, whichever amount is greater;

(2) exemplary damages;

(3) costs of court; and

(4) reasonable attorney's fees.

(b) In addition to amounts recovered under Subsection (a) of this section, a person whose employment is suspended or terminated in violation of this section is entitled to:

(1) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most current salary; and

(2) compensation for wages lost during the period of suspension or termination.

(c) A person who sues under this section has the burden of proof, but in the event of a determination by either the board or a court of competent jurisdiction that the report or abstract made the subject of the cause of action was authorized or required under Section 1, 2, 3, 4, 5, 6, 7, or 8 of this article and that it was made without malice, it is a rebuttable presumption that a person's employment was suspended or terminated for reporting under this article if the person is suspended or terminated within 60 days after making the report.

(d) An action under this article may be brought in the district court of the county:

(1) in which the plaintiff resides;

(2) in which the plaintiff was employed by the defendant; or

(3) in which the defendant conducts business.

Sec. 12. (a) The board shall notify each registered nurse who is reported to the board under Section 1, 2, 3, 4, or 5 of this article of the filing of the report unless doing so would jeopardize an active investigation.

(b) The registered nurse or the nurse's authorized representative is entitled on request to review any report submitted to the board under Section 1, 2, 3, 4, or 5 of this article unless doing so would jeopardize an active investigation. The identity of the individual making or signing the report may not be revealed.

(c) The registered nurse or authorized representative may place into the record a statement of reasonable length containing the registered nurse's rebuttal of any information existing in the report. That statement shall at all times accompany that part of the report being rebutted. The board, in investigating the report, shall review that statement and evaluate any reasons asserted by the nurse as justifying his or her conduct.

Sec. 13. If at any time the board determines that a report submitted under this article is without merit, the report shall be expunged from the registered nurse's file.

Sec. 14. A report required or authorized under this article and the identity of the person making the report are confidential and may not be disclosed except as follows:

(1) the board may use the information in connection with an investigation or disciplinary action against a licensee or in the subsequent trial or appeal of a board action or order;

(2) the board may disclose the information to a licensing or disciplinary authority of another jurisdiction;

(3) the board may disclose the information to a peer assistance program approved by the board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Article 5561c-3, Vernon's Texas Civil Statutes);

(4) the board may disclose the information to a person engaged in bona fide research or other educational purpose if all individual-identifying information is first deleted;

(5) with respect to any report made under Section 2 of this article, the board, on the request of any organization or other person required to report under Section 2 of this article, shall provide to the organization or person information about the allegations contained in the report, the findings of the peer review committee, and the status of the board's investigation; or

(6) the information may be disclosed in any civil suit in which a person is named as a defendant as a result of the person making the report or in the prosecution of any cause of action based on a claim that the person making the report was subject to retaliatory action as a result of making the report.

Sec. 15. (a) This article does not prevent disclosure under Article 4525, Revised Statutes, of formal charges filed by the board or a final disciplinary action taken by the board as a result, in whole or in part, of the submitting of a report under this article. In no event may any report or information submitted as required or authorized by this article be available for discovery or court subpoena or introduced into evidence in a professional nursing liability suit arising out of the provision or failure to provide professional nursing services.

(b) The filing of a report under this article with the board pursuant to this article, an investigation by the board, or any disposition by the board does not prevent an individual, agency, facility, or other person from taking disciplinary action against a registered nurse.

(c) The reporting required under this article does not constitute state action on behalf of the person or organization reporting.

(d) The duty to report or any other provisions under this article may not be nullified through contract.

Sec. 16. (a) The board shall disseminate at least twice a year and at other times determined necessary by the board information that is of significant interest to

professional nurses and employers of professional nurses in Texas. The information shall include summaries of final disciplinary action taken against registered nurses by the board since its last dissemination of information.

(b) The board shall inform, in the manner it determines appropriate, registered nurses, facilities, agencies, and other persons of their duty to report under this article.

SECTION 3. Title 71, Revised Statutes, is amended by adding Article 4525b to read as follows:

Art. 4525b. PEER REVIEW

Sec. 1. In this article:

(1) "Professional nursing peer review committee" means a committee composed of at least a majority of registered nurses established under the authority of the governing body of a national, state, or local professional nursing association, a school of professional nursing, the nursing staff of a hospital, health science center, nursing home, home health agency, temporary nursing service, or other health-care facility, or state agency or political subdivision for the purpose of conducting peer review. A professional nursing peer review committee includes the employees and agents of the committee, including assistants, investigators, intervenors, attorneys, and any other person or organization that is employed by or serves the committee in any capacity.

(2) "Peer review" means the evaluation of professional nursing services, the qualifications of professional nurses, the quality of patient care rendered by professional nurses, the merits of complaints concerning professional nurses and professional nursing care, and determinations or recommendations regarding complaints, including:

(A) the accuracy of nursing assessments and observations;

(B) appropriateness and quality of the care rendered by a professional nurse;

(C) reports made to a professional nursing peer review committee concerning activities under the committee's review authority;

(D) reports by a professional nursing peer review committee to other committees or to the board as permitted or required by law; and

(E) implementation of the duties of a professional nursing peer review committee by its members, agents, or employees.

Sec. 2. (a) Except as otherwise provided by this article, all proceedings of a professional nursing peer review committee are confidential and all communications made to a professional nursing peer review committee are privileged. A member, agent, or employee of a professional nursing peer review committee or a participant in any proceeding before the committee may not disclose or be required to disclose a communication made to the committee or a record or proceeding of the committee.

(b) A person who attends a proceeding of a professional nursing peer review committee may not disclose or be required to disclose any information acquired in connection with or in the course of the proceeding or disclose any opinion, recommendation, or evaluation of the committee or any member of the committee.

(c) The members of a professional nursing peer review committee and the persons who provide information to the committee may not be questioned about their testimony before the committee or about opinions formed as a result of the committee proceedings.

(d) Except as otherwise permitted by this article, all information made confidential by this section is not subject to subpoena or discovery in any civil matter, is not admissible as evidence in any judicial or administrative proceeding, and may not be introduced into evidence in a professional nursing liability suit arising out of the provision of or a failure to provide professional nursing services.

Sec. 3. (a) A professional nursing peer review committee shall disclose on request written or oral communications made to the committee and the records and proceedings of the committee to:

- (1) the state board of registration or licensure of any state; or
- (2) a law enforcement authority investigating a criminal matter.

(b) A professional nursing peer review committee may disclose written or oral communications made to the committee and the records and proceedings of the committee to:

- (1) the association, school, agency, facility, or other organization under whose authority the committee is established;
- (2) another professional nursing peer review committee;
- (3) a peer assistance program approved by the board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Article 5561c-3, Vernon's Texas Civil Statutes);
- (4) appropriate state or federal agencies or accrediting organizations which accredit health-care facilities or schools of nursing or which survey facilities for quality of care; or
- (5) persons engaged in bona fide research, if all individual-identifying information is deleted.

(c) If a professional nursing peer review committee discloses information under Subsection (a) of this section that could result in the reprimand, suspension, termination, or other disciplinary action of a professional nurse, or itself recommends or takes such action, the committee shall provide the nurse with a detailed summary of information disclosed or the basis of its action or recommendation. The nurse shall be permitted an opportunity to offer rebuttal information and to submit a rebuttal statement of reasonable length. The rebuttal statement shall be included with the information disclosed.

(d) If a committee discloses information to a nurse under this section, the committee has not by that action waived the privilege of nondisclosure of committee information and proceedings.

(e) The peer review committee disclosing the information and the person receiving information disclosed under this section shall protect, to the extent possible, the identity of patients.

Sec. 4. (a) A member of a professional nursing peer review committee or a person participating in peer review under this article who is named as a defendant in a civil action or subjected to other retaliatory action as a consequence of the person's participation in peer review may use information that is confidential under this article in defense of the civil action or in a civil action based on an allegation of retaliation for the person's participation in peer review.

(b) If a person discloses information under this section, the person has not by that action waived the privilege of nondisclosure of all other information privileged under this article.

Sec. 5. A cause of action does not accrue against the members, agents, or employees of a professional nursing peer review committee or against a school of professional nursing, hospital, nursing home, home health agency, health science center, other health-care facility, the nursing staff of such a facility, professional nursing association, or other organization from any act, statement, determination or recommendation made, or act reported, without malice, in the course of peer review as defined in this article. A person who, without malice, furnishes records, information, or assistance to a professional nursing peer review committee is not liable in a civil action based on the person's participation or assistance in peer review and may not be subjected to retaliatory action as a result of such act.

Sec. 6. A professional nursing peer review committee, a person participating in peer review, or an organization, named as a defendant in any civil action or subjected to other retaliatory action as a result of participation in peer review, may file a counterclaim in any pending action or may prove a cause of action in a subsequent suit to recover any defense costs, including court costs, reasonable attorney's fees, and

actual and punitive damages if the suit or retaliatory action is determined to be frivolous, unreasonable, without foundation, or taken in bad faith.

Sec. 7. (a) A court may not enjoin the activities of a professional nursing peer review committee under this article.

(b) The provisions of this article may not be nullified by contract.

SECTION 4. Article 4527, Revised Statutes, is amended to read as follows:

Art. 4527. FEES. The Board of Nurse Examiners shall establish reasonable and necessary fees for the administration of its functions in amounts not to exceed:

Admission fee to examination	\$200	[75]
Duplicate or substitute of current certificate	25	[10]
Duplicate or substitute of permanent certificate	25	[10]
Duplicate permits	15	[5]
Endorsement with or without examination	150	[75]
Re-registration	50	[25]
Issuance of a temporary permit under Article 4523	25	[15]
Reactivating from inactive status	30	
Accreditation of new schools and programs	150	
Approval of exchange visitor programs	75	
Proctoring of examinations of examinees from other states	115	
Filing of affidavits in re-change of name	10	
Verification of records	50	[10]
Bad checks	25	[15]
Advanced Nurse Practitioner-initial credentials	50	
Advanced Nurse Practitioner-renewal of credentials	25	

The Board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement. The Board shall set and collect a sales charge for copies of any paper or record in the office of the Board and for any printed material published by the Board. The charges are to be in an amount considered sufficient to reimburse the Board for its actual expenses. All fees received by said Board under this law shall be placed in the State Treasury to the credit of a special fund to be known as the "Professional Nurse Registration Fund" and the Comptroller shall upon requisition of the Board from time to time draw warrants upon the State Treasurer for the amounts specified in such requisition; provided, however, all fees collected by the Board and deposited in the Professional Nurse Registration Fund shall be expended as specified by itemized appropriation in the General Appropriations Act and shall be used by the Board, and under its directions, only for purposes of carrying out this Act. *The Board may use any of the fees and charges collected by it, as necessary, to retain, hire, or contract for additional prosecutors, hearing examiners, investigators, and support staff as necessary to aid in the investigation of complaints and the prosecution of persons subject to the Board's jurisdiction.* This provision shall apply to all fees ~~[on hand on September 1, 1981, and all fees]~~ of whatsoever nature as permitted by law ~~[now or as amended]~~. The state auditor shall audit the financial transactions of the Board during each fiscal biennium.

SECTION 5. Article 4527b, Revised Statutes, is amended to read as follows:

Art. 4527b. PENALTY. A person who violates any provision of *Article 4527a, Revised Statutes, commits an offense. Except as provided by this section, an offense under that article is a Class A misdemeanor. If it is shown in the trial of a person allegedly in violation of that article that the person has once before been convicted of a violation of Article 4527a, on conviction the person shall be punished for a third degree felony. Each day of violation constitutes a separate offense. On final conviction of an offense under that article, a person forfeits all rights and privileges conferred by virtue of licensure under this chapter* ~~[is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$500, confinement in jail for a term not to exceed 30 days, or both].~~

SECTION 6. Each entity in existence on the effective date of this Act that is required by Subsection (b), Section 2, Article 4525a, Revised Statutes, as added by this Act, to develop a plan for reporting certain actions of registered nurses shall have the plan in operation on January 1, 1988.

SECTION 7. This Act takes effect September 1, 1987.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 13, 1987, by a viva-voce vote; and that the Senate concurred in House amendments on May 22, 1987, by a viva-voce vote. Passed the House, with amendments, on May 21, 1987, by a non-record vote.

Approved June 18, 1987.

Effective Sept. 1, 1987.