

NURSE PRACTICE ACT AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Paula F. Julander

This act amends provisions related to occupations and professions. The act repeals the Health Care Assistant Registration Act. The act incorporates the Health Care Assistant Registration Act into the Nurse Practice Act. The act adds definitions to the Nurse Practice Act. The act amends the membership of the Board of Nursing. The act amends license classifications. The act amends license qualifications and requires all licensees or registered individuals under the Nurse Practice Act to submit to criminal background checks. The act provides for limited exemptions from registration for health care assistants. The act amends provisions related to grounds for denial of a license or registration, unlawful conduct, and disciplinary actions to incorporate health care assistants. The act makes technical amendments. ⚭ This act contains a coordination clause. ⚭

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

58-31b-102, as enacted by Chapter 288, Laws of Utah 1998

58-31b-201, as last amended by Chapter 314, Laws of Utah 2000

58-31b-202, as enacted by Chapter 288, Laws of Utah 1998

58-31b-301, as enacted by Chapter 288, Laws of Utah 1998

58-31b-302, as last amended by Chapter 314, Laws of Utah 2000

58-31b-308, as enacted by Chapters 189 and 288, Laws of Utah 1998

58-31b-401, as last amended by Chapter 314, Laws of Utah 2000

58-31b-402, as enacted by Chapter 288, Laws of Utah 1998

58-31b-501, as enacted by Chapter 288, Laws of Utah 1998

58-31b-503, as enacted by Chapter 288, Laws of Utah 1998

58-31b-702, as enacted by Chapter 288, Laws of Utah 1998



28 **58-31b-701**, as enacted by Chapter 288, Laws of Utah 1998

29 ENACTS:

30 **58-31b-308.5**, Utah Code Annotated 1953

31 REPEALS:

32 **58-62-101**, as enacted by Chapter 289, Laws of Utah 1994

33 **58-62-102**, as last amended by Chapters 30 and 169, Laws of Utah 1998

34 **58-62-201**, as last amended by Chapters 30 and 169, Laws of Utah 1998

35 **58-62-301**, as enacted by Chapter 289, Laws of Utah 1994

36 **58-62-302**, as enacted by Chapter 289, Laws of Utah 1994

37 **58-62-303**, as enacted by Chapter 289, Laws of Utah 1994

38 **58-62-304**, as last amended by Chapter 196, Laws of Utah 1997

39 **58-62-305**, as enacted by Chapter 289, Laws of Utah 1994

40 **58-62-401**, as enacted by Chapter 289, Laws of Utah 1994

41 **58-62-501**, as enacted by Chapter 289, Laws of Utah 1994

42 **58-62-601**, as enacted by Chapter 289, Laws of Utah 1994

43 **58-62-602**, as enacted by Chapter 289, Laws of Utah 1994

44 **58-62-603**, as enacted by Chapter 289, Laws of Utah 1994

45 *Be it enacted by the Legislature of the state of Utah:*

46 Section 1. Section **58-31b-102** is amended to read:

47 **58-31b-102. Definitions.**

48 In addition to the definitions in Section 58-1-102, as used in this chapter:

49 (1) "Administrative penalty" means a monetary fine imposed by the division for acts or
50 omissions determined to constitute unprofessional or unlawful conduct in accordance with a fine
51 schedule established by rule and as a result of an adjudicative proceeding conducted in accordance
52 with Title 63, Chapter 46b, Administrative Procedures Act.

53 (2) "Applicant" means a person who applies for licensure or registration under this chapter
54 by submitting a completed application for licensure or registration and the required fees to the
55 department.

56 (3) "Approved education program" means a nursing education program that meets the
57 minimum standards for educational programs established under this chapter and by division rule
58 in collaboration with the board.

59 (4) "Board" means the Board of Nursing created in Section 58-31b-201.

60 (5) "Consultation and referral plan" means a written plan jointly developed by an advanced
61 practice registered nurse and a consulting physician that permits the advanced practice registered
62 nurse to prescribe schedule II-III controlled substances in consultation with the consulting
63 physician.

64 (6) "Consulting physician" means a physician and surgeon or osteopathic physician and
65 surgeon licensed in accordance with this title who has agreed to consult with an advanced practice
66 registered nurse with a controlled substance license, a DEA registration number, and who will be
67 prescribing schedule II-III controlled substances.

68 (7) "Diagnosis" means the identification of and discrimination between physical and
69 psychosocial signs and symptoms essential to the effective execution and management of health
70 care.

71 (8) "Examinee" means a person who applies to take or does take any examination required
72 under this chapter for licensure.

73 (9) "Health care assistant" means an individual who:

74 (a) engages in the practice of a health care assistant; and

75 (b) is subject to registration under this chapter and is not subject to registration, licensure,
76 or certification under any other chapter of this title.

77 [~~9~~] (10) "Licensee" means a person who is licensed or registered under this chapter.

78 (11) "Practice as a health care assistant" means providing direct personal assistance or care
79 for compensation to an individual who is ill, injured, infirm, developmentally or physically
80 disabled, mentally disabled, or mentally retarded, and who is in a private residence or regulated
81 facility.

82 [~~10~~] (12) "Practice of nursing" means assisting individuals or groups to maintain or attain
83 optimal health, implementing a strategy of care to accomplish defined goals and evaluating
84 responses to care and treatment. The practice of nursing requires substantial specialized or general
85 knowledge, judgment, and skill based upon principles of the biological, physical, behavioral, and
86 social sciences, and includes:

87 (a) initiating and maintaining comfort measures;

88 (b) promoting and supporting human functions and responses;

89 (c) establishing an environment conducive to well-being;

- 90 (d) providing health counseling and teaching;
- 91 (e) collaborating with health care professionals on aspects of the health care regimen;
- 92 (f) performing delegated procedures only within the education, knowledge, judgment, and
- 93 skill of the licensee; and
- 94 (g) delegating nurse interventions that may be performed by others and are not in conflict
- 95 with this chapter.

96 [~~(H)~~] (13) (a) "Practice of nurse anesthesia" means the practice of nursing related to the

97 provision of preoperative, intraoperative, and postoperative anesthesia care and related services

98 upon the request of a physician, surgeon, or other licensed professional, who is acting within the

99 scope of their practice, by a person licensed under this chapter as a certified registered nurse

100 anesthetist and includes:

- 101 (i) preanesthesia preparation and evaluation including:
 - 102 (A) performing a preanesthetic assessment of the patient;
 - 103 (B) ordering and evaluating appropriate lab and other studies to determine the health of
 - 104 the patient; and
 - 105 (C) selecting, ordering, or administering appropriate medications;
- 106 (ii) anesthesia induction, maintenance, and emergence, including:
 - 107 (A) selecting and initiating the planned anesthetic technique;
 - 108 (B) selecting and administering anesthetics and adjunct drugs and fluids; and
 - 109 (C) administering general, regional, and local anesthesia;
- 110 (iii) postanesthesia follow-up care, including:
 - 111 (A) evaluating the patient's response to anesthesia and implementing corrective actions;
 - 112 and
 - 113 (B) selecting, ordering, or administering the above medications and studies; and
 - 114 (iv) other related services within the scope of practice of a certified registered nurse
 - 115 anesthetist, including:
 - 116 (A) emergency airway management;
 - 117 (B) advanced cardiac life support; and
 - 118 (C) the establishment of peripheral, central, and arterial invasive lines.
- 119 (b) Nothing in this section shall be construed as to require a certified registered nurse
- 120 anesthetist to obtain an advance practice registered nurse license in order to select, administer, or

121 provide preoperative, intraoperative, or postoperative anesthesia care and services.

122 ~~[(12)]~~ (14) "Practice of practical nursing" means the performance of nursing acts in the
123 generally recognized scope of practice of licensed practical nurses as defined by rule and as
124 provided in this Subsection ~~[(12)]~~ (14) by a person licensed under this chapter as a licensed
125 practical nurse and under the direction of a registered nurse, licensed physician, or other specified
126 health care professional as defined by rule. Practical nursing acts include:

- 127 (a) contributing to the assessment of the health status of individuals and groups;
- 128 (b) participating in the development and modification of the strategy of care;
- 129 (c) implementing appropriate aspects of the strategy of care;
- 130 (d) maintaining safe and effective nursing care rendered to a patient directly or indirectly;

131 and

- 132 (e) participating in the evaluation of responses to interventions.

133 ~~[(13)]~~ (15) "Practice of registered nursing" means performing acts of nursing as provided
134 in this Subsection ~~[(13)]~~ (15) by a person licensed under this chapter as a registered nurse within
135 the generally recognized scope of practice of registered nurses as defined by rule. Registered
136 nursing acts include:

- 137 (a) assessing the health status of individuals and groups;
- 138 (b) identifying health care needs;
- 139 (c) establishing goals to meet identified health care needs;
- 140 (d) planning a strategy of care;
- 141 (e) prescribing nursing interventions to implement the strategy of care;
- 142 (f) implementing the strategy of care;
- 143 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
144 indirectly;
- 145 (h) evaluating responses to interventions;
- 146 (i) teaching the theory and practice of nursing; and
- 147 (j) managing and supervising the practice of nursing.

148 ~~[(14)]~~ (16) "Practice of advanced practice registered nursing" means the practice of nursing
149 within the generally recognized scope and standards of advanced practice registered nursing as
150 defined by rule and consistent with professionally recognized preparation and education standards
151 of an advanced practice registered nurse by a person licensed under this chapter as an advanced

152 practice registered nurse. Advanced practice registered nursing includes:

- 153 (a) maintenance and promotion of health and prevention of disease;
- 154 (b) diagnosis, treatment, correction, consultation, and referral for common health
- 155 problems; and
- 156 (c) prescription or administration of prescription drugs or devices including:
- 157 (i) local anesthesia;
- 158 (ii) schedule IV-V controlled substances; and
- 159 (iii) schedule II-III controlled substances in accordance with a consultation and referral
- 160 plan.

161 (17) "Regulated facility" means a health care facility subject to licensure under Title 26,

162 Chapter 21, Health Care Facility Licensing and Inspection Act and does not include:

- 163 (a) the Utah State Hospital or the Utah State Developmental Center;
- 164 (b) a residential treatment or residential support facility;
- 165 (i) subject to licensure under Title 62A, Chapter 2, Licensure of Programs and Facilities;

166 and

- 167 (ii) serving people with disabilities, as defined by Department of Human Services rules;

168 or

- 169 (c) a covered health care facility as defined in Section 26-21-9.5.

170 [~~15~~] (18) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.

171 [~~16~~] (19) "Unlicensed assistive personnel" means any unlicensed person, regardless of

172 title, to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance with

173 the standards of the profession.

174 [~~17~~] (20) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-31b-502

175 and as may be further defined by rule.

176 Section 2. Section **58-31b-201** is amended to read:

177 **58-31b-201. Board.**

178 (1) There is created the Board of Nursing that consists of the following [~~nine~~] eleven

179 members:

- 180 (a) [~~seven~~] eight nurses in a manner as may be further defined in division rule; [~~and~~]
- 181 (b) one registered health care assistant; and
- 182 [~~b~~] (c) two members of the public.

183 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

184 (3) The board shall carry out the duties and responsibilities in Sections 58-1-202 and
185 58-1-203 and shall:

186 (a) (i) recommend to the division minimum standards for educational programs qualifying
187 a person for licensure under this chapter;

188 (ii) recommend to the division denial, approval, or withdrawal of approval regarding
189 educational programs that meet or fail to meet the established minimum standards; and

190 (iii) designate one of its members on a permanent or rotating basis to:

191 (A) assist the division in reviewing complaints concerning the unlawful or unprofessional
192 conduct of a licensee; and

193 (B) advise the division in its investigation of these complaints.

194 (b) A board member who has, under Subsection (3)(a)(iii), reviewed a complaint or
195 advised in its investigation may be disqualified from participating with the board when the board
196 serves as a presiding officer in an adjudicative proceeding concerning the complaint.

197 (4) (a) The director shall appoint an individual to serve as the executive administrator of
198 the Board of Nursing. Except when the board serves as a presiding officer in an adjudicative
199 procedure, the executive administrator shall serve as an ex officio member of the board and shall
200 represent the position of the division in matters considered by the board.

201 (b) The executive administrator shall be a licensed registered nurse, shall have earned a
202 masters degree in nursing, and shall have a minimum of five years of experience working in
203 nursing administration or nursing education.

204 Section 3. Section **58-31b-202** is amended to read:

205 **58-31b-202. Prescriptive Practice Peer Committee.**

206 (1) (a) There is created under Subsection 58-1-203(6) the Prescriptive Practice Peer
207 Committee.

208 (b) The Prescriptive Practice Peer Committee shall:

209 (i) advise the board of nursing regarding prescriptive practice issues;

210 (ii) periodically audit and review the prescribing records of advanced practice registered
211 nurses located on the Controlled Substance Data Bank on a schedule established by rule;

212 (iii) recommend the scope of prescriptive practice authority of advanced practice registered
213 nurses consistent with this chapter and with professionally accepted therapies and treatments;

214 (iv) periodically review the current consultation and referral plans prepared in accordance
215 with Subsection 58-31b-102~~(14)~~(16)(c)(iii) and evaluate compliance with the proposed plans;
216 and

217 (v) recommend disciplinary action.

218 (c) The composition of this committee shall be:

219 (i) two individuals who are licensed as advanced practice registered nurses who prescribe
220 within their practice and possess a controlled substance license;

221 (ii) two individuals licensed as physicians and surgeons or osteopathic physicians and
222 surgeons; and

223 (iii) one individual who is a pharmacologist.

224 (2) The division, in collaboration with the board, may create other peer committees to the
225 Board of Nursing pursuant to Subsection 58-1-203(6) to make recommendations to the board
226 regarding licensure, practice, and education issues.

227 Section 4. Section **58-31b-301** is amended to read:

228 **58-31b-301. License or registration required - Classifications.**

229 (1) A license is required to engage in the practice of nursing, except as specifically
230 provided in Sections 58-1-307 and 58-31b-308.

231 (2) The division shall issue to a person who qualifies under this chapter a license in the
232 classification of:

233 (a) licensed practical nurse;

234 (b) registered nurse;

235 (c) advanced practice registered nurse intern;

236 (d) advanced practice registered nurse; and

237 (e) certified registered nurse anesthetist.

238 (3) An individual holding an advanced practice registered nurse license as of July 1, 1998,
239 who cannot document the successful completion of advanced course work in patient assessment,
240 diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be issued an
241 "APRN - without prescriptive practice" license.

242 (4) The division shall grant an advanced practice registered nurse license to any licensed
243 advanced practice registered nurse currently holding prescriptive authority under any predecessor
244 act on July 1, 1998.

245 (5) (a) An individual shall be registered under this chapter in order to engage in practice
246 as a health care assistant, except as provided in Sections 58-31b-308 and 58-31b-308.5.

247 (b) The division shall issue to a person who qualifies under this chapter a registration in
248 the classification of health care assistant.

249 Section 5. Section **58-31b-302** is amended to read:

250 **58-31b-302. Qualifications for licensure.**

251 (1) An applicant for licensure as a licensed practical nurse shall:

252 (a) submit to the division an application in a form prescribed by the division;

253 (b) pay to the division a fee determined under Section 63-38-3.2;

254 (c) have a high school diploma or its equivalent;

255 (d) be in a condition of physical and mental health that will permit the applicant to practice
256 safely as a licensed practical nurse;

257 (e) have completed an approved practical nursing education program or an equivalent as
258 determined by the board;

259 (f) have passed the examinations as required by division rule made in collaboration with
260 the board; and

261 (g) meet with the board, if requested, to determine the applicant's qualifications for
262 licensure.

263 (2) An applicant for licensure as a registered nurse shall:

264 (a) submit to the division an application form prescribed by the division;

265 (b) pay to the division a fee determined under Section 63-38-3.2;

266 (c) have a high school diploma or its equivalent;

267 (d) be in a condition of physical and mental health that will allow the applicant to practice
268 safely as a registered nurse;

269 (e) have completed an approved registered nursing education program;

270 (f) have passed the examinations as required by division rule made in collaboration with
271 the board; and

272 (g) meet with the board, if requested, to determine the applicant's qualifications for
273 licensure.

274 (3) Applicants for licensure as an advanced practice registered nurse shall:

275 (a) submit to the division an application on a form prescribed by the division;

- 276 (b) pay to the division a fee determined under Section 63-38-3.2;
- 277 (c) be in a condition of physical and mental health which will allow the applicant to
- 278 practice safely as an advanced practice registered nurse;
- 279 (d) hold a current registered nurse license in good standing issued by the state or be
- 280 qualified at the time for licensure as a registered nurse;
- 281 (e) have earned a graduate degree in nursing or a related area of specialized knowledge as
- 282 determined appropriate by the division in collaboration with the board;
- 283 (f) have completed course work in patient assessment, diagnosis and treatment, and
- 284 pharmacotherapeutics from an education program approved by the division in collaboration with
- 285 the board;
- 286 (g) have successfully completed clinical practice in psychiatric and mental health nursing,
- 287 including psychotherapy as defined by division rule, after completion of the masters degree
- 288 required for licensure, to practice within the psychiatric and mental health nursing specialty;
- 289 (h) have passed the examinations as required by division rule made in collaboration with
- 290 the board;
- 291 (i) be currently certified by a program approved by the division in collaboration with the
- 292 board and submit evidence satisfactory to the division of the certification; and
- 293 (j) meet with the board, if requested, to determine the applicant's qualifications for
- 294 licensure.
- 295 (4) An applicant for licensure as a certified registered nurse anesthetist shall:
- 296 (a) submit to the division an application on a form prescribed by the division;
- 297 (b) pay to the division a fee determined under Section 63-38-3.2;
- 298 (c) be in a condition of physical and mental health which will allow the applicant to
- 299 practice safely as a certified registered nurse anesthetist;
- 300 (d) hold a current registered nurse license in good standing issued by the state or be
- 301 qualified at the time for licensure as a registered nurse;
- 302 (e) complete a nurse anesthesia program which is approved by the Council on
- 303 Accreditation of Nurse Anesthesia Educational Programs;
- 304 (f) be currently certified by a program approved by the division in collaboration with the
- 305 board and submit evidence satisfactory to the division of the certification; and
- 306 (g) meet with the board, if requested, to determine the applicant's qualifications for

307 licensure.

308 (5) An applicant for registration as a health care assistant shall:

309 (a) submit an application in a form prescribed by the division;

310 (b) pay a fee determined by the department under Section 63-38-3.2;

311 (c) certify in writing that he is free from any physical, mental, or emotional condition that
 312 will or may reasonably be expected to prevent the applicant from practicing as a health care
 313 assistant in compliance with this chapter; and

314 (d) may not, within five years immediately prior to application, have any substantiated
 315 allegations of abuse, neglect, or misappropriation of client property listed against him on the
 316 certified nurse assistant registry maintained by the State Office of Education or on a similar
 317 registry maintained in another state in compliance with 42 CFR 483.156.

318 (6) An applicant for licensure or registration under this chapter:

319 (a) ~~h~~ ~~[is subject to a criminal background check maintained pursuant to Title 53, Chapter 10,~~
 320 ~~Part 2, Bureau of Criminal Identification, at the applicant's expense; and]~~

320a (i) SHALL SUBMIT FINGERPRINT CARDS IN A FORM ACCEPTABLE TO THE DIVISION AT THE
 320b TIME THE LICENSE APPLICATION IS FILED AND SHALL CONSENT TO A FINGERPRINT
 320c BACKGROUND CHECK BY THE UTAH BUREAU OF CRIMINAL IDENTIFICATION AND THE FEDERAL
 320d BUREAU OF INVESTIGATION REGARDING THE APPLICATION; AND

320e (ii) THE DIVISION SHALL REQUEST THE DEPARTMENT OF PUBLIC
 320f SAFETY TO COMPLETE A FEDERAL BUREAU OF INVESTIGATION CRIMINAL BACKGROUND
 320g CHECK FOR EACH APPLICANT THROUGH THE NATIONAL CRIMINAL HISTORY SYSTEM (NCIC) OR
 320h ANY SUCCESSOR SYSTEM; AND ~~h~~

321 (b) if convicted of one or more felonies, must receive an absolute discharge from the
 322 sentences for all felony convictions five or more years prior to the date of filing an application for
 323 licensure or registration under this chapter.

324 (7) For purposes of conducting the criminal background checks required in Subsection (6),
 325 the division shall have direct access to criminal background information maintained pursuant to
 326 Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

327 (8) (a) Any new nurse license or health care assistant registration issued under this section
 328 shall be conditional, pending completion of the criminal background check. If the criminal
 329 background check discloses the applicant has failed to accurately disclose a criminal history, the
 330 license or registration shall be immediately and automatically revoked.

331 (b) Any person whose conditional license or registration has been revoked under
 332 Subsection (8)(a) shall be entitled to a postrevocation hearing to challenge the revocation. The
 333 hearing shall be conducted in accordance with Title 63, Chapter 46b, Administrative Procedures

334 Act.

335 Section 6. Section **58-31b-308** is amended to read:

336 **58-31b-308. Exemptions from licensure or registration.**

337 (1) In addition to the exemptions from licensure in Section 58-1-307, the following

338 persons may engage in acts included within the definition of the practice of nursing, subject to the
339 stated circumstances and limitations, without being licensed under this chapter:

340 (a) friends, family members, foster parents, or legal guardians of a patient performing
341 gratuitous nursing care for the patient;

342 (b) persons providing care in a medical emergency;

343 (c) persons engaged in the practice of religious tenets of a church or religious
344 denomination; and

345 (d) after July 1, 2000, a person licensed to practice nursing by a jurisdiction that has joined
346 the Nurse Licensure Compact to the extent permitted by Section 58-31c-102.

347 (2) Notwithstanding Subsection (1)(d), the division may, in accordance with Section
348 58-31c-102, limit or revoke practice privileges in this state of a person licensed to practice nursing
349 by a jurisdiction that has joined the Nurse Licensing Compact.

350 (3) In addition to the exemptions from licensure under Section 58-1-307, the following
351 individuals may engage in acts or practices included in the practice of a health care assistant,
352 within the stated limitations, without being registered under this chapter:

353 (a) an individual providing gratuitous care for another individual;

354 (b) a volunteer, whether or not he receives token compensation other than salary or wages:

355 (i) in programs sponsored or authorized by federal Public Law 93-113; or

356 (ii) at any regulated facility; and

357 (c) individuals providing:

358 (i) services generally considered independent living activities such as preparing meals,
359 shopping for personal items or groceries, managing money, using the telephone, performing
360 housekeeping, and other similar activities not involving direct personal assistance and care as the
361 division may define by rule; and

362 (ii) child day care or baby-sitting, whether or not the services are subject to licensure under
363 Title 26, Chapter 39, Utah Child Care Licensing Act; or

364 (d) an individual employed on an intermittent basis to provide a specified limited period
365 of care for an adult or child with disabilities needing regular daily care, in order to allow the
366 relative or other person who is the adult or child's regular and unpaid caretaker respite from his or
367 her caregiver duties regarding the adult or child.

368 Section 7. Section **58-31b-308.5** is enacted to read:

369 **58-31b-308.5. Health assistant registration – Classifications -- Temporary**
370 **employment prior to registration.**

371 (1) An individual may temporarily engage in practice as a health care assistant for not
372 more than ten consecutive days immediately after being initially employed in the state as a health
373 care assistant, without having submitted a registration application under this chapter. The
374 registration application shall be postmarked not later than the last day of the ten consecutive days
375 referred to in this Subsection (1).

376 (2) An individual may not practice as a health care assistant in this state for more than ten
377 days without having submitted an application for registration.

378 (3) If the application for registration is denied, the applicant shall cease practice in this
379 state as a health care assistant upon receipt of notice of the denial.

380 Section 8. Section **58-31b-401** is amended to read:

381 **58-31b-401. Grounds for denial of licensure or registration and disciplinary**
382 **proceedings.**

383 (1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license
384 of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue
385 a public or private reprimand to a licensee, and to issue cease and desist orders shall be in
386 accordance with Section 58-1-401.

387 (2) If a court of competent jurisdiction determines a nurse or health care assistant is an
388 incapacitated person as defined in Section 75-1-201 or that he is mentally ill as defined in Section
389 62A-12-202, and unable to safely engage in the practice of nursing or the practice of a health care
390 assistant, the director shall immediately suspend the license of the nurse or health care assistant
391 upon the entry of the judgment of the court, without further proceedings under Title 63, Chapter
392 46b, Administrative Procedures Act, regardless of whether an appeal from the court's ruling is
393 pending. The director shall promptly notify the nurse or health care assistant, in writing, of the
394 suspension.

395 (3) (a) If the division and the majority of the board find reasonable cause to believe a nurse
396 or health care assistant, who is not determined judicially to be an incapacitated person or to be
397 mentally ill, is incapable of practicing nursing or the practice of a health care assistant with
398 reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or
399 alcohol, or as a result of any mental or physical condition, the board shall recommend that the

400 director file a petition with the division, and cause the petition to be served upon the nurse or
401 health care assistant with a notice of hearing on the sole issue of the capacity of the nurse or health
402 care assistant to competently, safely engage in the practice of nursing or the practice of a health
403 care assistant.

404 (b) The hearing shall be conducted under Section 58-1-109 and Title 63, Chapter 46b,
405 Administrative Procedures Act, except as provided in Subsection (4).

406 (4) (a) Every nurse or health care assistant who accepts the privilege of being licensed
407 under this chapter gives consent to:

408 (i) submitting to an immediate mental or physical examination, at the nurse's or health care
409 assistant's expense and by a division-approved practitioner selected by the nurse or health care
410 assistant, when directed in writing by the division and a majority of the board to do so; and

411 (ii) the admissibility of the reports of the examining practitioner's testimony or
412 examination, and waives all objections on the ground the reports constitute a privileged
413 communication.

414 (b) The examination may be ordered by the division, with the consent of a majority of the
415 board, only upon a finding of reasonable cause to believe:

416 (i) the nurse or health care assistant is mentally ill or incapacitated or otherwise unable to
417 practice nursing or health care assistance with reasonable skill and safety; and

418 (ii) immediate action by the division and the board is necessary to prevent harm to the
419 nurse's or health care assistant's patients or the general public.

420 (c) (i) Failure of a nurse or health care assistant to submit to the examination ordered under
421 this section is a ground for the division's immediate suspension of the nurse's or health care
422 assistant's license by written order of the director.

423 (ii) The division may enter the order of suspension without further compliance with Title
424 63, Chapter 46b, Administrative Procedures Act, unless the division finds the failure to submit to
425 the examination ordered under this section was due to circumstances beyond the control of the
426 nurse or health care assistant and was not related directly to the illness or incapacity of the nurse
427 or health care assistant.

428 (5) (a) A nurse or health care assistant whose license is suspended under Subsection (2),
429 (3), or (4)(c) has the right to a hearing to appeal the suspension within ten days after the license
430 is suspended.

431 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
432 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for
433 the continuance of the order of suspension in order to prevent harm to the nurse's or health care
434 assistant's patients or the general public.

435 (6) A nurse or health care assistant whose license is revoked, suspended, or in any way
436 restricted under this section may request the division and the board to consider, at reasonable
437 intervals, evidence presented by the nurse or health care assistant, under procedures established
438 by division rule, regarding any change in the nurse's or health care assistant's condition, to
439 determine whether:

440 (a) he is or is not able to safely and competently engage in the practice of nursing or the
441 practice of a health care assistant; and

442 (b) he is qualified to have his license to practice under this chapter restored completely or
443 in part.

444 (7) Nothing in Section 63-2-206 may be construed as limiting the authority of the division
445 to report current significant investigative information to the coordinated licensure information
446 system for transmission to party states as required of the division by Article VII of the Nurse
447 Licensure Compact in Section 58-31c-102.

448 (8) For purposes of this section and Section 58-31b-402, "licensed" or "license" includes
449 "registered" and "registration" under this chapter.

450 Section 9. Section **58-31b-402** is amended to read:

451 **58-31b-402. Authority to assess penalty.**

452 (1) After a proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act,
453 and Title 58, Chapter 1, Division of Occupational and Professional Licensing Act, the division may
454 impose an administrative penalty of up to \$10,000 for unprofessional or unlawful conduct under
455 this chapter in accordance with a fine schedule established by rule.

456 (2) The assessment of a penalty under this section does not affect any other action the
457 division is authorized to take regarding a license issued under this chapter.

458 (3) The division may impose an administrative penalty of up to \$500 for any violation of
459 Subsection 58-31b-501(1)(a) or [~~(2)~~] (b), consistent with Section 58-31b-503.

460 Section 10. Section **58-31b-501** is amended to read:

461 **58-31b-501. Unlawful conduct.**

462 (1) "Unlawful conduct" includes:

463 ~~[(+)]~~ (a) using the following titles, names or initials, if the user is not properly licensed
464 under this chapter:

465 ~~[(a)]~~ (i) nurse;

466 ~~[(b)]~~ (ii) licensed practical nurse, practical nurse, or L.P.N.;

467 ~~[(c)]~~ (iii) registered nurse or R.N.;

468 ~~[(d)]~~ (iv) registered nurse practitioner, N.P., or R.N.P.;

469 ~~[(e)]~~ (v) registered nurse specialist, N.S., or R.N.S.;

470 ~~[(f)]~~ (vi) registered psychiatric mental health nurse specialist;

471 ~~[(g)]~~ (vii) advanced practice registered nurse;

472 ~~[(h)]~~ (viii) nurse anesthetist, certified nurse anesthetist, certified registered nurse
473 anesthetist, or C.R.N.A.; or

474 ~~[(i)]~~ (ix) other generally recognized names or titles used in the profession of nursing;

475 ~~[(2)]~~ (b) using any other name, title, or initials that would cause a reasonable person to

476 believe the user is licensed under this chapter if the user is not properly licensed under this chapter;
477 and

478 ~~[(3)]~~ (c) conducting a nursing education program in the state for the purpose of qualifying
479 individuals to meet requirements for licensure under this chapter without the program having been
480 approved under Section 58-31b-601.

481 (2) (a) An individual registered as a health care assistant under this chapter may use any
482 title in his practice as a health care assistant, and an employer may assign a title to health care
483 assistants it employs, if the title does not cause a reasonable person to believe the registrant is a
484 licensee in any other license classification under this chapter and Title 58, Occupations and
485 Professions.

486 (b) If any issue is raised regarding a title under this section, the division shall determine
487 if the title may be used for health care assistants.

488 Section 11. Section **58-31b-503** is amended to read:

489 **58-31b-503. Penalty for unlawful conduct.**

490 (1) Any person who violates the unlawful conduct provision specifically defined in
491 Subsection 58-1-501(1)(a)(i) is guilty of a third degree felony.

492 (2) Any person who violates any of the unlawful conduct provisions specifically defined

493 in Subsections 58-1-501(1)(~~b~~)(a)(ii) through [~~e~~] (v) and 58-31b-501(~~3~~)(1)(c) is guilty of a
494 class A misdemeanor.

495 (3) Any person who violates any of the unlawful conduct provisions specifically defined
496 in this chapter and not set forth in Subsection (1) or (2) is guilty of a class B misdemeanor.

497 (4) Subject to Subsection (5), the division may assess administrative penalties in
498 accordance with the provisions of Section 58-31b-402 for acts of unprofessional or unlawful
499 conduct or any other appropriate administrative action in accordance with the provisions of Section
500 58-31b-401.

501 (5) If a licensee has been convicted of violating Section 58-31b-501 prior to an
502 administrative finding of a violation of the same section, the licensee may not be assessed an
503 administrative penalty under this chapter for the same offense for which the conviction was
504 obtained.

505 Section 12. Section **58-31b-701** is amended to read:

506 **58-31b-701. Immunity from liability.**

507 A person licensed or registered under this chapter:

508 (1) who provides emergency care in accordance with Section 78-11-22 is entitled to the
509 immunity from civil liability provided under that section; and

510 (2) is considered a health care provider under Chapter 13, Health Care Providers Immunity
511 from Liability Act, and is entitled to the immunity from civil liability provided under that chapter.

512 Section 13. Section **58-31b-702** is amended to read:

513 **58-31b-702. Reporting of disciplinary action -- Immunity from liability.**

514 (1) A licensed health care facility or organization or a professional society of nurses in the
515 state that takes disciplinary action against a person licensed under this chapter relating to any of
516 the following shall report the action in writing to the division within 30 days after the action is
517 taken:

518 (a) that person's professional acts or omissions as a licensed nurse or registered health care
519 assistant;

520 (b) that person's nursing competence or ability to practice nursing safely; or

521 (c) that person's use of alcohol or drugs in an unlawful manner or to the extent the person
522 is impaired in his ability to practice nursing or health care assistance safely.

523 (2) Any person or organization furnishing information in accordance with this section is

524 immune from liability to the extent that the information is furnished in good faith and without
525 malice.

526 Section 14. **Repealer.**

527 This act repeals:

528 Section **58-62-101, Title.**

529 Section **58-62-102, Definitions.**

530 Section **58-62-201, Board.**

531 Section **58-62-301, Registration -- Classifications -- Temporary employment prior to**
532 **registration.**

533 Section **58-62-302, Registration qualifications.**

534 Section **58-62-303, Term of registration -- Expiration -- Renewal.**

535 Section **58-62-304, Exemptions from registration.**

536 Section **58-62-305, Registrant title.**

537 Section **58-62-401, Denial of registration -- Disciplinary proceedings.**

538 Section **58-62-501, Unlawful conduct -- Penalty.**

539 Section **58-62-601, Registry.**

540 Section **58-62-602, Notice of dismissal -- Division action.**

541 Section **58-62-603, Immunity from liability for reporting.**

541a **h SECTION 15. COORDINATION CLAUSE.**

541b If this bill and H.B. 63, Licensing Amendments Regarding Background Checks, both pass, it is
541c the intent of the Legislature that: **(1) SUBSECTION 58-1-301.5(1) OF THE DATABASE SHALL READ:**

541d **(1) THE DIVISION SHALL HAVE DIRECT ACCESS TO CRIMINAL BACKGROUND**
541e **INFORMATION MAINTAINED BY THE BUREAU OF CRIMINAL IDENTIFICATION UNDER CHAPTER 53,**
541f **CHAPTER 10, PART 2, BUREAU OF CRIMINAL IDENTIFICATION, FOR BACKGROUND SCREENING OF**
541g **LICENSURE APPLICANTS AS REQUIRED IN:**

541h **(a) SECTION 58-31b-302 OF TITLE 58, CHAPTER 316, NURSE PRACTICE ACT;**

541i **(b) SECTION 58-47b-302 OF TITLE 58, CHAPTER 47b, MASSAGE THERAPY PRACTICE ACT;**

541j **(c) SECTION 58-55-302 OF TITLE 58, CHAPTER 55, CONSTRUCTION TRADES LICENSING, AS**
541k **IT APPLIES TO ALARM COMPANIES AND ALARM COMPANY AGENTS; AND**

541l **(d) SECTION 58-63-302 OF TITLE 58, CHAPTER 63, SECURITY PERSONNEL LICENSING ACT.** h

Legislative Review Note

as of 12-18-01 8:57 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel