

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

ENACTS:

58-31b-308.5, Utah Code Annotated 1953

REPEALS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

58-31b-102. Definitions.

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

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

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

(3) "Approved education program" means a nursing education program that meets the minimum standards for educational programs established under this chapter and by division rule in

collaboration with the board.

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

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

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

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

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

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

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

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

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

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

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

(a) initiating and maintaining comfort measures;

(b) promoting and supporting human functions and responses;

- (c) establishing an environment conducive to well-being;
- (d) providing health counseling and teaching;
- (e) collaborating with health care professionals on aspects of the health care regimen;
- (f) performing delegated procedures only within the education, knowledge, judgment, and skill of the licensee; and
- (g) delegating nurse interventions that may be performed by others and are not in conflict with this chapter.

~~[(H)]~~ (13) (a) "Practice of nurse anesthesia" means the practice of nursing related to the provision of preoperative, intraoperative, and postoperative anesthesia care and related services upon the request of a physician, surgeon, or other licensed professional, who is acting within the scope of their practice, by a person licensed under this chapter as a certified registered nurse anesthetist and includes:

- (i) preanesthesia preparation and evaluation including:
 - (A) performing a preanesthetic assessment of the patient;
 - (B) ordering and evaluating appropriate lab and other studies to determine the health of the patient; and
 - (C) selecting, ordering, or administering appropriate medications;
- (ii) anesthesia induction, maintenance, and emergence, including:
 - (A) selecting and initiating the planned anesthetic technique;
 - (B) selecting and administering anesthetics and adjunct drugs and fluids; and
 - (C) administering general, regional, and local anesthesia;
- (iii) postanesthesia follow-up care, including:
 - (A) evaluating the patient's response to anesthesia and implementing corrective actions; and
 - (B) selecting, ordering, or administering the above medications and studies; and
- (iv) other related services within the scope of practice of a certified registered nurse anesthetist, including:
 - (A) emergency airway management;
 - (B) advanced cardiac life support; and

(C) the establishment of peripheral, central, and arterial invasive lines.

(b) Nothing in this section shall be construed as to require a certified registered nurse anesthetist to obtain an advance practice registered nurse license in order to select, administer, or provide preoperative, intraoperative, or postoperative anesthesia care and services.

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

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

and

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

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

- (a) assessing the health status of individuals and groups;
- (b) identifying health care needs;
- (c) establishing goals to meet identified health care needs;
- (d) planning a strategy of care;
- (e) prescribing nursing interventions to implement the strategy of care;
- (f) implementing the strategy of care;
- (g) maintaining safe and effective nursing care that is rendered to a patient directly or indirectly;
- (h) evaluating responses to interventions;

- (i) teaching the theory and practice of nursing; and
- (j) managing and supervising the practice of nursing.

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

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

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

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

- (a) the Utah State Hospital or the Utah State Developmental Center;
- (b) a residential treatment or residential support facility:
 - (i) subject to licensure under Title 62A, Chapter 2, Licensure of Programs and Facilities; and
 - (ii) serving people with disabilities, as defined by Department of Human Services rules; or
- (c) a covered health care facility as defined in Section 26-21-9.5.

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

~~[(16)]~~ (19) "Unlicensed assistive personnel" means any unlicensed person, regardless of title, to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance with the standards of the profession.

~~[(17)]~~ (20) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-31b-502 and as may be further defined by rule.

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

58-31b-201. Board.

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

(a) [~~seven~~] eight nurses in a manner as may be further defined in division rule; [~~and~~]

(b) one registered health care assistant; and

[~~(b)~~] (c) two members of the public.

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The Prescriptive Practice Peer Committee shall:

- (i) advise the board of nursing regarding prescriptive practice issues;
- (ii) periodically audit and review the prescribing records of advanced practice registered nurses located on the Controlled Substance Data Bank on a schedule established by rule;
- (iii) recommend the scope of prescriptive practice authority of advanced practice registered nurses consistent with this chapter and with professionally accepted therapies and treatments;
- (iv) periodically review the current consultation and referral plans prepared in accordance with Subsection 58-31b-102~~(14)~~(16)(c)(iii) and evaluate compliance with the proposed plans; and
- (v) recommend disciplinary action.

(c) The composition of this committee shall be:

- (i) two individuals who are licensed as advanced practice registered nurses who prescribe within their practice and possess a controlled substance license;
- (ii) two individuals licensed as physicians and surgeons or osteopathic physicians and surgeons; and
- (iii) one individual who is a pharmacologist.

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

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

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

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

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

- (a) licensed practical nurse;

- (b) registered nurse;
- (c) advanced practice registered nurse intern;
- (d) advanced practice registered nurse; and
- (e) certified registered nurse anesthetist.

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

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

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

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

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

58-31b-302. Qualifications for licensure.

- (1) An applicant for licensure as a licensed practical nurse shall:
- (a) submit to the division an application in a form prescribed by the division;
 - (b) pay to the division a fee determined under Section 63-38-3.2;
 - (c) have a high school diploma or its equivalent;
 - (d) be in a condition of physical and mental health that will permit the applicant to practice safely as a licensed practical nurse;
 - (e) have completed an approved practical nursing education program or an equivalent as determined by the board;
 - (f) have passed the examinations as required by division rule made in collaboration with the board; and
 - (g) meet with the board, if requested, to determine the applicant's qualifications for licensure.

- (2) An applicant for licensure as a registered nurse shall:
- (a) submit to the division an application form prescribed by the division;
 - (b) pay to the division a fee determined under Section 63-38-3.2;
 - (c) have a high school diploma or its equivalent;
 - (d) be in a condition of physical and mental health that will allow the applicant to practice safely as a registered nurse;
 - (e) have completed an approved registered nursing education program;
 - (f) have passed the examinations as required by division rule made in collaboration with the board; and
 - (g) meet with the board, if requested, to determine the applicant's qualifications for licensure.
- (3) Applicants for licensure as an advanced practice registered nurse shall:
- (a) submit to the division an application on a form prescribed by the division;
 - (b) pay to the division a fee determined under Section 63-38-3.2;
 - (c) be in a condition of physical and mental health which will allow the applicant to practice safely as an advanced practice registered nurse;
 - (d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;
 - (e) have earned a graduate degree in nursing or a related area of specialized knowledge as determined appropriate by the division in collaboration with the board;
 - (f) have completed course work in patient assessment, diagnosis and treatment, and pharmacotherapeutics from an education program approved by the division in collaboration with the board;
 - (g) have successfully completed clinical practice in psychiatric and mental health nursing, including psychotherapy as defined by division rule, after completion of the masters degree required for licensure, to practice within the psychiatric and mental health nursing specialty;
 - (h) have passed the examinations as required by division rule made in collaboration with the board;
 - (i) be currently certified by a program approved by the division in collaboration with the

board and submit evidence satisfactory to the division of the certification; and

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

(4) An applicant for licensure as a certified registered nurse anesthetist shall:

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

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

(c) be in a condition of physical and mental health which will allow the applicant to practice safely as a certified registered nurse anesthetist;

(d) hold a current registered nurse license in good standing issued by the state or be qualified at the time for licensure as a registered nurse;

(e) complete a nurse anesthesia program which is approved by the Council on Accreditation of Nurse Anesthesia Educational Programs;

(f) be currently certified by a program approved by the division in collaboration with the board and submit evidence satisfactory to the division of the certification; and

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

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

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

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

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

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

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

(a) (i) shall submit fingerprint cards in a form acceptable to the division at the time the license application is filed and shall consent to a fingerprint background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application; and

(ii) the division shall request the Department of Public Safety to complete a Federal Bureau of Investigation criminal background check for each applicant through the national criminal history system (NCIC) or any successor system; and

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

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

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

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

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

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

(1) In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included within the definition of the practice of nursing, subject to the stated circumstances and limitations, without being licensed under this chapter:

- (a) friends, family members, foster parents, or legal guardians of a patient performing gratuitous nursing care for the patient;
 - (b) persons providing care in a medical emergency;
 - (c) persons engaged in the practice of religious tenets of a church or religious denomination;
- and
- (d) after July 1, 2000, a person licensed to practice nursing by a jurisdiction that has joined the Nurse Licensure Compact to the extent permitted by Section 58-31c-102.

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

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

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

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

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

(ii) at any regulated facility; and

(c) individuals providing:

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

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

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

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

58-31b-308.5. Health assistant registration -- Classifications -- Temporary employment prior to registration.

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

this Subsection (1).

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

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

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

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

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

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

(3) (a) If the division and the majority of the board find reasonable cause to believe a nurse or health care assistant, who is not determined judicially to be an incapacitated person or to be mentally ill, is incapable of practicing nursing or the practice of a health care assistant with reasonable skill regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the board shall recommend that the director file a petition with the division, and cause the petition to be served upon the nurse or health care assistant with a notice of hearing on the sole issue of the capacity of the nurse or health care assistant to competently, safely engage in the practice of nursing or the practice of a health care assistant.

(b) The hearing shall be conducted under Section 58-1-109 and Title 63, Chapter 46b,

Administrative Procedures Act, except as provided in Subsection (4).

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

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

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

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

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

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

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

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

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

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

assistant's patients or the general public.

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

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

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

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

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

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

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

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

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

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

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

58-31b-501. Unlawful conduct.

(1) "Unlawful conduct" includes:

~~[(1)]~~ (a) using the following titles, names or initials, if the user is not properly licensed under this chapter:

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

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

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

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

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

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

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

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

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

~~[(2)]~~ (b) using any other name, title, or initials that would cause a reasonable person to believe the user is licensed under this chapter if the user is not properly licensed under this chapter; and

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

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

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

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

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

(1) Any person who violates the unlawful conduct provision specifically defined in

Subsection 58-1-501(1)(a)(i) is guilty of a third degree felony.

(2) Any person who violates any of the unlawful conduct provisions specifically defined in Subsections 58-1-501(1)(~~(b)~~)(a)(ii) through ~~(e)~~ (v) and 58-31b-501(~~(3)~~)(1)(c) is guilty of a class A misdemeanor.

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

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

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

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

58-31b-701. Immunity from liability.

A person licensed or registered under this chapter:

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

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

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

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

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

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

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

(c) that person's use of alcohol or drugs in an unlawful manner or to the extent the person

is impaired in his ability to practice nursing or health care assistance safely.

(2) Any person or organization furnishing information in accordance with this section is immune from liability to the extent that the information is furnished in good faith and without malice.

Section 14. Repealer.

This act repeals:

Section 58-62-101, Title.

Section 58-62-102, Definitions.

Section 58-62-201, Board.

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

Section 58-62-302, Registration qualifications.

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

Section 58-62-304, Exemptions from registration.

Section 58-62-305, Registrant title.

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

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

Section 58-62-601, Registry.

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

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

Section 15. Coordination clause.

If this bill and H.B. 63, Licensing Amendments Regarding Background Checks, both pass, it is the intent of the Legislature that Subsection 58-1-301.5(1) of the database shall read:

(1) The division shall have direct access to criminal background information maintained by the Bureau of Criminal Identification under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification, for background screening of licensure applicants as required in:

(a) Section 58-31b-302 of Title 58, Chapter 31b, Nurse Practice Act;

(b) Section 58-47b-302 of Title 58, Chapter 47b, Massage Therapy Practice Act;

(c) Section 58-55-302 of Title 58, Chapter 55, Construction Trades Licensing, as it applies to alarm companies and alarm company agents; and

(d) Section 58-63-302 of Title 58, Chapter 63, Security Personnel Licensing Act.