

SENATE BILL 146

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J2

2001 Regular Session
(11r0788)

ENROLLED BILL

-- *Economic and Environmental Affairs/Environmental Matters* --

Introduced by **Senator Hollinger**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Nurses - Certified Nursing Assistants**

3 FOR the purpose of requiring the State Board of Nursing to maintain a certain
4 registry; altering certain reporting requirements; altering certain verification
5 procedures; altering the regulations that the Board must adopt; establishing a
6 certain qualification for certification; altering a certain renewal provision for
7 certificates; increasing the disciplinary measures that the Board may invoke;
8 providing that the Board may impose a probationary certificate for the
9 abandonment of a patient; increasing certain curriculum content; prohibiting
10 certain misrepresentations; clarifying certain definitions; defining a term;
11 requiring that the Board adopt regulations to implement this Act on or before a
12 certain date; requiring the Board to submit certain reports by a certain date;
13 and generally relating to certified nursing assistants.

14 BY repealing and reenacting, with amendments,
15 Article - Health Occupations
16 Section 8-205(a), 8-505, ~~8-507(a) and (g) through (i)~~, 8-6A-01, 8-6A-05(a)

1 through (c), 8-6A-08(a), 8-6A-10(a), 8-6A-14(c), and 8-703(a)
2 Annotated Code of Maryland
3 (2000 Replacement Volume)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article - Health Occupations**

7 8-205.

8 (a) In addition to the powers and duties set forth elsewhere in this title, the
9 Board has the following powers and duties:

10 (1) To adopt rules and regulations to carry out the provisions of this title;

11 (2) To set standards for the practice of registered nursing and licensed
12 practical nursing;

13 (3) To adopt rules and regulations for the performance of delegated
14 medical functions which are recognized jointly by the State Board of Physician
15 Quality Assurance and the State Board of Nursing, under § 14-306(d) of this article;

16 (4) To adopt rules and regulations for the performance of additional
17 nursing acts that:

18 (i) May be performed under any condition authorized by the Board,
19 including emergencies; and

20 (ii) Require education and clinical experience;

21 (5) To adopt rules and regulations for registered nurses to perform
22 independent nursing functions that:

23 (i) Require formal education and clinical experience; and

24 (ii) May be performed under any condition authorized by the Board,
25 including emergencies;

26 (6) To adopt rules and regulations for licensed practical nurses to
27 perform additional acts in the practice of registered nursing that:

28 (i) Require formal education and clinical experience;

29 (ii) May be performed under any condition authorized by the Board,
30 including emergencies; and

31 (iii) Are recognized by the Nursing Board as proper for licensed
32 practical nurses to perform;

- 1 (7) To keep a record of its proceedings;
- 2 (8) To submit an annual report to the Governor and Secretary;
- 3 (9) To enforce the employment record requirements of this title;
- 4 (10) To keep separate lists, which lists are open to reasonable public
5 inspection, of all:
- 6 (i) Registered nurses licensed under this title;
- 7 (ii) Licensed practical nurses licensed under this title;
- 8 (iii) Nurse midwives certified under this title;
- 9 (iv) Nurse practitioners certified under this title; and
- 10 (v) Other licensees with a nursing specialty that is certified under
11 this title;
- 12 (11) To collect any funds of the Board;
- 13 (12) To report any alleged violation of this title to the State's Attorney of
14 the county where the alleged violation occurred;
- 15 (13) In accordance with the State budget, to incur any necessary expense
16 for prosecution of an alleged violation of this title; [and]
- 17 (14) On receipt of a written and signed complaint, including a referral
18 from the Commissioner of Labor and Industry, conduct an unannounced inspection of
19 the office of a nurse in independent practice, other than an office of a nurse in
20 independent practice in a hospital, related institution, freestanding medical facility,
21 or a freestanding birthing center, to determine compliance at that office with the
22 Centers for Disease Control's guidelines on universal precautions; AND
- 23 (15) TO MAINTAIN A NURSE AIDE REGISTRY THAT COMPLIES WITH
24 FEDERAL LAW.
- 25 8-505.
- 26 (a) Except as provided in subsection (b) of this section, the following applies:
- 27 (1) If a nursing administrator, registered nurse, [or] licensed practical
28 nurse, OR CERTIFIED NURSING ASSISTANT knows of an action or condition that might
29 be grounds for action under § 8-316 OR SUBTITLE 6A of this title, the nursing
30 administrator, registered nurse, [or] licensed practical nurse, OR CERTIFIED
31 NURSING ASSISTANT shall report the action or condition to the Board; and
- 32 (2) An individual shall have the immunity from liability described under
33 § 5-709 of the Courts and Judicial Proceedings Article for making a report as required
34 by this subsection.

(b) If a nurse administrator, registered nurse, [or] licensed practical nurse, OR CERTIFIED NURSING ASSISTANT has reason to know that a licensee OR CERTIFICATE HOLDER has committed an action or has a condition that might be grounds for reprimand or probation of the licensee OR CERTIFICATE HOLDER or suspension or revocation of the license under § 8-316 OR § 8-6A-10 of this title because the licensee OR CERTIFICATE HOLDER is alcohol impaired or drug impaired, the nurse administrator, registered nurse, [or] licensed practical nurse, OR CERTIFIED NURSING ASSISTANT is not required to report the licensee OR CERTIFICATE HOLDER to the Board if:

(1) The nurse administrator, registered nurse, [or] licensed practical nurse, OR CERTIFIED NURSING ASSISTANT knows that the licensee OR CERTIFICATE HOLDER is in an alcohol or drug treatment program that is accredited by the Joint Commission on the Accreditation of Healthcare Organizations, is certified by the Department, or is under the care of a health care practitioner who is competent and capable of dealing with alcoholism and drug abuse;

(2) The nurse administrator, registered nurse, [or] licensed practical nurse, OR CERTIFIED NURSING ASSISTANT is able to verify that the licensee OR CERTIFICATE HOLDER remains in the treatment program until discharge; and

(3) The action or condition of the licensee OR CERTIFICATE HOLDER has not caused injury to any person while the licensee is practicing registered nursing or licensed practical nursing OR THE CERTIFICATE HOLDER IS WORKING AS A NURSING ASSISTANT.

(c) A person is not required under this section to make any report that would be in violation of any federal or State law, rule, or regulation concerning the confidentiality of alcohol and drug abuse patient records.

~~8-507.~~

(a) ~~(1) In this section the following words have the meanings indicated.~~

~~(2) "Health care facility" means a hospital or related institution as defined in § 19-301 of the Health General Article.~~

~~(3) "Initially providing or referring" means the first time a nursing staff agency provides or refers a particular licensed practical nurse, registered nurse, or [geriatric] CERTIFIED nursing assistant to a health care facility.~~

~~(4) "Nursing personnel" means:~~

~~(i) Any individual licensed by the State Board of Nursing as a:~~

~~1. Licensed practical nurse; or~~

~~2. Registered nurse; [or]~~

1 (ii) ~~[A geriatric nursing assistant] ANY PATIENT CARE PERSONNEL~~
 2 ~~who complies with the provisions of § 19-308.1 of the Health—General Article for~~
 3 ~~patient care personnel; OR~~

4 (iii) ~~ANY INDIVIDUAL AUTHORIZED TO PROVIDE PATIENT CARE~~
 5 ~~UNDER SUBTITLE 6A OF THIS TITLE.~~

6 (5) (i) ~~"Nursing staff agency" means any person, firm, corporation,~~
 7 ~~partnership, or other business entity engaged in the business of providing or referring~~
 8 ~~nursing personnel to render temporary nursing services at a health care facility in the~~
 9 ~~State.~~

10 (ii) ~~"Nursing staff agency" does not include:~~

11 1. ~~Any person, firm, corporation, partnership, or other~~
 12 ~~business entity engaged solely in the business of providing or referring nursing~~
 13 ~~personnel to render private duty nursing care at a health care facility;~~

14 2. ~~A nursing staff agency operated by a health care facility~~
 15 ~~solely for the purpose of procuring, furnishing, or referring temporary or permanent~~
 16 ~~nursing personnel for employment at that health care facility;~~

17 3. ~~A home health agency regulated under Title 19, Subtitle 4~~
 18 ~~of the Health—General Article; or~~

19 4. ~~Any nursing personnel procuring, furnishing, or referring~~
 20 ~~their own services to a health care facility without the direct or indirect assistance of~~
 21 ~~a nursing staff agency.~~

22 (6) ~~"Responsible party" means the individual at a nursing staff agency~~
 23 ~~who controls the day to day operation of the nursing staff agency.~~

24 (g) ~~Before initially providing or referring a [geriatric] CERTIFIED nursing~~
 25 ~~assistant to related institutions to render temporary services, the nursing staff~~
 26 ~~agency shall verify with the [Office of Licensing and Certification Programs of the~~
 27 ~~Department] BOARD that the [geriatric] nursing assistant [complies with the~~
 28 ~~applicable standards under the regulations adopted under § 19-308.1 of the Health—~~
 29 ~~General Article] IS DULY CERTIFIED AND QUALIFIED TO PROVIDE PATIENT CARE.~~

30 (h) (1) ~~A nursing staff agency may not knowingly provide or refer a licensed~~
 31 ~~practical nurse who is not authorized to practice licensed practical nursing under this~~
 32 ~~title to a health care facility to render temporary nursing services.~~

33 (2) ~~A nursing staff agency may not knowingly provide or refer a~~
 34 ~~registered nurse who is not authorized to practice registered nursing under this title~~
 35 ~~to a health care facility to render temporary nursing services.~~

36 (3) ~~A NURSING STAFF AGENCY MAY NOT KNOWINGLY PROVIDE OR~~
 37 ~~REFER A NURSING ASSISTANT WHO IS NOT AUTHORIZED TO PROVIDE PATIENT CARE~~

1 ~~UNDER THIS TITLE TO A HEALTH CARE FACILITY TO RENDER TEMPORARY PATIENT~~
 2 ~~CARE.~~

3 (i) (1) ~~Except as provided in paragraph (2) of this subsection:~~

4 (i) ~~If a nursing staff agency knows of an action or condition~~
 5 ~~performed by a licensed practical nurse [or], registered nurse, OR CERTIFIED~~
 6 ~~NURSING ASSISTANT provided or referred by that nursing staff agency that might be~~
 7 ~~grounds for action under § 8-316 of this title, the nursing staff agency shall report the~~
 8 ~~action or condition to the Board; and~~

9 (ii) ~~An individual shall have immunity from liability described~~
 10 ~~under § 5-709 of the Courts and Judicial Proceedings Article for making a report as~~
 11 ~~required under this paragraph.~~

12 (2) ~~A nursing staff agency is not required under this subsection to make~~
 13 ~~any report that would be in violation of any federal or State law, rule, or regulation~~
 14 ~~concerning the confidentiality of alcohol and drug abuse patient records.~~

15 8-6A-01.

16 (a) In this subtitle the following words have the meanings indicated.

17 (b) "Approved nursing assistant training program" means a course of training
 18 that meets the basic nursing assistant curriculum prescribed and approved by the
 19 Board.

20 (c) "Board" means the State Board of Nursing.

21 (d) "Certificate" means a certificate issued by the Board to practice as a
 22 certified nursing assistant in the State.

23 (e) "Certified medicine aide" means a [certified] GERIATRIC nursing assistant
 24 who has completed a 60-hour, State-approved course in medication administration.

25 (f) "Certified nursing assistant":

26 (1) Means an individual regardless of title who routinely performs
 27 nursing tasks delegated by a registered nurse or licensed practical nurse for
 28 compensation OR SATISFIES THE CRITERIA CONTAINED IN § 8-6A-05(D) OF THIS
 29 TITLE; and

30 (2) Does not include a medication assistant.

31 (g) "Department" means the Department of Health and Mental Hygiene.

32 (H) "GERIATRIC NURSING ASSISTANT" MEANS A CERTIFIED NURSING
 33 ASSISTANT WHO HAS SUCCESSFULLY COMPLETED THE REQUIREMENTS FOR
 34 GERIATRIC NURSING ASSISTANT MANDATED UNDER FEDERAL LAW AND THE
 35 REGULATIONS OF THE BOARD.

1 (h) (I) "Medication assistant" means an individual who has completed the
2 16-hour course in medication administration approved by the Board.

3 8-6A-05.

4 (a) The Board shall adopt regulations establishing [the qualifications for
5 certification as a certified nursing assistant]:

6 (1) CATEGORIES OF CERTIFIED NURSING ASSISTANTS, INCLUDING ~~BUT~~
7 ~~NOT LIMITED TO~~ GERIATRIC NURSING ASSISTANTS, HOME HEALTH AIDES, SCHOOL
8 HEALTH AIDES, DIALYSIS TECHNICIANS, INDIVIDUALS WORKING IN
9 DEVELOPMENTAL DISABILITIES ADMINISTRATION FACILITIES, AND MEDICINE
10 AIDES;

11 (2) QUALIFICATIONS FOR EACH CATEGORY OF CERTIFIED NURSING
12 ASSISTANT; AND

13 (3) STANDARDS FOR QUALIFICATION OF APPLICANTS FOR
14 CERTIFICATION, INCLUDING THE APPLICANT'S CRIMINAL HISTORY, WORK RECORD,
15 AND PROHIBITIONS AGAINST BEHAVIOR WHICH MAY BE POTENTIALLY HARMFUL TO
16 PATIENTS.

17 (b) To qualify for certification AS A NURSING ASSISTANT OR A NURSING
18 ASSISTANT IN A SPECIFIC CATEGORY, an applicant shall meet the requirements set
19 by the Board.

20 (c) (1) An applicant for a certificate shall:

21 (i) Submit an application to the Board on the form that the Board
22 requires;

23 (ii) Provide evidence, as required by the Board, of successful
24 completion of an approved nursing assistant training program; [and]

25 (iii) Pay to the Board an application fee set by the Board; AND

26 (IV) BE OF GOOD MORAL CHARACTER.

27 (2) An applicant for certification as a certified medicine aide, in addition
28 to the requirements under subsection (c)(1) of this section, shall submit an additional
29 application to that effect to the Board on the form that the Board requires.

30 (3) An applicant for a certificate may not:

31 (i) Have committed any act or omission that would be grounds for
32 discipline or denial of certification under this subtitle; and

33 (ii) Have a record of abuse, negligence, misappropriation of a
34 resident's property, or any disciplinary action taken or pending in any other state or
35 territory of the United States against the certification of the nursing assistant in the
36 state or territory.

1 8-6A-08.

2 (a) A certificate expires on the 28th day of the birth month of the nursing
3 assistant, unless the certificate is renewed for a [1-year] 2-YEAR term as provided in
4 this section.

5 8-6A-10.

6 (a) Subject to the hearing provisions of § 8-317 of this title, the Board may
7 deny a certificate OR ISSUE A PROBATIONARY CERTIFICATE to any applicant,
8 reprimand any certificate holder, place any certificate holder on probation, or suspend
9 or revoke the certificate of a certificate holder, if the applicant or certificate holder:

10 (1) Fraudulently or deceptively obtains or attempts to obtain a
11 certificate for the applicant or for another;

12 (2) Fraudulently or deceptively uses a certificate;

13 (3) Is disciplined by a licensing, military, or disciplinary authority in this
14 State or in any other state or country or convicted or disciplined by a court in this
15 State or in any other state or country for an act that would be grounds for disciplinary
16 action under the Board's disciplinary statutes;

17 (4) Is convicted of or pleads guilty or nolo contendere to a felony or to a
18 crime involving moral turpitude, whether or not any appeal or other proceeding is
19 pending to have the conviction or plea set aside;

20 (5) Files a false report or record of an individual under the certificate
21 holder's care;

22 (6) Gives any false or misleading information about a material matter in
23 an employment application;

24 (7) Fails to file or record any health record that is required by law;

25 (8) Induces another person to fail to file or record any health record that
26 is required by law;

27 (9) Has violated any order, rule, or regulation of the Board relating to the
28 practice or certification of a nursing assistant;

29 (10) Provides services as a nursing assistant while:

30 (i) Under the influence of alcohol; or

31 (ii) Using any narcotic or controlled dangerous substance, as
32 defined in Article 27 of the Code, or other drug that is in excess of therapeutic
33 amounts or without valid medical indication;

34 (11) Is habitually intoxicated;

- 1 (12) Is addicted to, or habitually abuses, any narcotic or controlled
2 dangerous substance as defined in Article 27 of the Code;
- 3 (13) Has acted in a manner inconsistent with the health or safety of a
4 person under the applicant or certificate holder's care;
- 5 (14) Has practiced as a nursing assistant in a manner which fails to meet
6 generally accepted standards for the practice of a nursing assistant;
- 7 (15) Has physically, verbally, or psychologically abused, neglected, or
8 otherwise harmed a person under the applicant or certificate holder's care;
- 9 (16) Has a physical or mental disability which renders the applicant or
10 certificate holder unable to practice as a certified nursing assistant with reasonable
11 skill and safety to the patients and which may endanger the health or safety of
12 persons under the care of the applicant or certificate holder;
- 13 (17) Has violated the confidentiality of information or knowledge as
14 prescribed by law concerning any patient;
- 15 (18) Has misappropriated patient or facility property;
- 16 (19) Performs certified nursing assistant functions incompetently;
- 17 (20) Has violated any provision of this title or has aided or knowingly
18 permitted any person to violate any provision of this title;
- 19 (21) Submits a false statement to collect a fee;
- 20 (22) Refuses, withholds from, denies, or discriminates against an
21 individual with regard to the provision of professional services for which the applicant
22 or certificate holder is certified and qualified to render because the individual is HIV
23 positive;
- 24 (23) Except in an emergency life-threatening situation where it is not
25 feasible or practicable, fails to comply with the Centers for Disease Control's
26 guidelines on universal precautions;
- 27 (24) Fails to cooperate with a lawful investigation conducted by the
28 Board;
- 29 (25) Fails to comply with instructions and directions of the supervising
30 registered nurse or licensed practical nurse;
- 31 (26) After failing to renew a certificate, commits any act that would be
32 grounds for disciplinary action under this section;
- 33 (27) Practices as a nursing assistant before obtaining or renewing the
34 certificate, including any time period when the certificate has lapsed;
- 35 (28) Impersonates another individual:

- 1 (i) Licensed under the provisions of this title; or
- 2 (ii) Who holds a certificate issued under the provisions of this title;
- 3 (29) Has acted in a manner inconsistent with the health or safety of a
4 person under the certified nursing assistant's care;
- 5 (30) Performs activities that exceed the education and training of the
6 certified nursing assistant; [or]
- 7 (31) Is expelled from the rehabilitation program established pursuant to §
8 8-208 of this title for failure to comply with the conditions of the program; OR
- 9 (32) ABANDONS A PATIENT.

10 8-6A-14.

11 (c) The curriculum content for an approved nursing assistant training
12 program shall include:

- 13 (1) Content consistent with State licensing requirements in the Health -
14 General Article and all federal requirements; [and]
- 15 (2) All basic skills required of a nursing assistant regardless of the
16 setting of the practice; AND
- 17 (3) ANY SKILLS REQUIRED FOR CERTIFICATION IN A SPECIFIC
18 CATEGORY.

19 8-703.

20 (a) (1) Unless authorized to practice registered nursing under this title, a
21 person may not represent to the public by title, by description of services, methods, or
22 procedures, or otherwise, that the person is authorized to practice registered nursing
23 in this State.

24 (2) Unless authorized to practice licensed practical nursing under this
25 title, a person may not represent to the public by title, by description of services,
26 methods, or procedures, or otherwise, that the person is authorized to practice
27 licensed practical nursing in this State.

28 (3) UNLESS AUTHORIZED TO PROVIDE PATIENT CARE AS A CERTIFIED
29 NURSING ASSISTANT OR MEDICATION ASSISTANT UNDER THIS TITLE, A PERSON MAY
30 NOT REPRESENT TO THE PUBLIC BY TITLE, BY DESCRIPTION OF SERVICES,
31 METHODS, OR PROCEDURES, OR OTHERWISE, THAT THE PERSON IS AUTHORIZED TO
32 PROVIDE CARE AS A CERTIFIED NURSING ASSISTANT OR MEDICATION ASSISTANT IN
33 THIS STATE.

34 (4) UNLESS AUTHORIZED TO PROVIDE PATIENT CARE IN A SPECIFIC
35 CATEGORY OF CERTIFIED NURSING ASSISTANT, A PERSON MAY NOT REPRESENT TO
36 THE PUBLIC BY TITLE, BY DESCRIPTION OF SERVICES, METHODS, OR PROCEDURES,

1 OR OTHERWISE, THAT THE PERSON IS AUTHORIZED TO PROVIDE CARE AS A
2 CERTIFIED NURSING ASSISTANT IN A SPECIFIC CATEGORY IN THIS STATE.

3 SECTION 2. AND BE IT FURTHER ENACTED, That on or before January 31,
4 2002, the Board of Nursing shall adopt regulations to implement this Act.

5 SECTION 3. AND BE IT FURTHER ENACTED, That on or before October 1,
6 2001, the Board of Nursing shall report to the Nursing Home Quality Oversight
7 Committee and to the ~~General Assembly~~ *House Environmental Matters Committee*
8 and the Senate Economic and Environmental Affairs Committee, in accordance with §
9 2-1246 of the State Government Article, on the implementation of this Act.

10 SECTION ~~3.~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
11 effect July 1, 2001.