

- SUBJECT:** Revising regulation of registered nurses
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 8 ayes — Gray, Capelo, Delisi, Glaze, Longoria, Maxey, Uresti, Wohlgemuth
- 0 nays
- 1 absent — Coleman
- SENATE VOTE:** On final passage, March 26 — voice vote
- WITNESSES:** For — James H. Willmann, Texas Nurses Association, Nursing Legislative Agenda Coalition; *Registered but did not testify:* Elizabeth Sjoberg, Texas Hospital Association; Heather Vasek, Texas Association for Home Care; Lynda Woolbert, Coalition for Nurses in Advanced Practice
- Against — None
- BACKGROUND:** Occupations Code, ch. 301, known as the Nursing Practice Act, establishes procedures and regulations for registered nurses. The Board of Nurse Examiners is responsible for the enforcement of guidelines for registered nurses, including eligibility for licensure, training, examinations, continuing education, complaint procedures, and disciplinary action.
- Government Code, sec. 411.125 allows the board to obtain Texas criminal history record information from the Department of Public Safety (DPS) for a person who:
- ! is an applicant for a license from the board;
 - ! has requested an eligibility determination for a license from the board; or
 - ! is subject to investigation by the board in connection with a complaint or formal charge against the person.

DIGEST: CSSB 1285 would authorize the Board of Nurse Examiners to approve pilot and demonstration projects for innovative concepts for the regulation or practice of professional nursing.

A licensed nurse could demonstrate continuing competency through various means, including targeted continuing education, certification, professional portfolio, and individual competency evaluation. Continuing education standards could be accredited or approved by the American Nurses Association Credentialing Center, rather than by the Board of Accreditation of the American Nurses Association or the National Federation of Specialty Nursing Organizations.

The board could commission a certified peace officer to enforce the Nursing Practice Act. The peace officer could not carry a firearm or make an arrest, but otherwise would have the powers, privileges, and immunities of an on-duty peace officer.

The board could request and receive criminal history record information from the Federal Bureau of Investigation (FBI). The information would be privileged and could not be disclosed to anyone except under a court order or to an approved nursing board. The individual would be entitled to a hearing if, because of criminal history record information, the board proposed to determine an applicant was ineligible for a license, or suspend or revoke a person's license or permit.

In making a determination after investigating a complaint against or conducting a peer review of a registered nurse, the board would have to determine the extent to which any poor care was the result of deficiencies in the nurse's judgment, knowledge, training, or skill, rather than other factors.

The bill would repeal Occupations Code, ch. 301.160, which establishes guidelines for pilot programs for proactive nursing peer review and targeted continuing nursing education.

The board would be considered a criminal justice agency for the sole purpose of directly obtaining criminal history record information from the FBI. As soon as possible after the effective date of this legislation, the executive director of the board would have to request a letter from the U.S.

Department of Justice determining whether or not the board would be considered a criminal justice agency for this purpose. The executive director would have to give the letter to the secretary of state upon receipt.

This bill would take effect September 1, 2001.

**SUPPORTERS
SAY:**

While current law allows the Board of Nurse Examiners to obtain Texas criminal history background on nurses in the state, there is no established way for the board to cross check applicants for criminal records in other states. DPS can cooperate with other states to find out about criminal histories, but cannot run a nationwide check. It is in the public's best interest for the board to know whether or not a nursing applicant has a criminal history.

It is important to require the board and the nursing peer review committees to review all evidence when determining the extent to which a deficiency in care was the result of the nurse's conduct. Sometimes situations are out of the nurse's control, and it therefore would be appropriate to require the board to consider all factors before deciding whether to take disciplinary action. This would help ensure that fault is appropriately assigned.

**OPPONENTS
SAY:**

Allowing the further commissioning of peace officers, even with limited powers, would be inappropriate. If federal criminal background checks are necessary, then the board should be authorized to hire a peace officer to request the background checks and not to commission an officer. A commissioned officer carries certain special privileges, such as immunity, and allowing the board to grant these privileges would be too expansive for the limited work of performing nursing applicant criminal history checks.

NOTES:

The substitute makes several changes to the Senate-passed version, including authorizing the board to recognize, prepare, or implement a continuing competency program and requiring the board and peer review committees to consider all evidence regarding deficiency of care.