

SUBJECT: Board authority over nursing licenses involving a criminal offense

COMMITTEE: Public Health — committee substitute recommended

VOTE: 5 ayes — Laubenberg, Jackson, McReynolds, Truitt, Zedler

0 nays

4 absent — Delisi, Coleman, Dawson, Solis

WITNESSES: For — None

Against — None

On — Katherine Thomas, Board of Nurse Examiners

BACKGROUND: The Board of Nurse Examiners regulates the practice of nursing, including the issuance of licenses. The board can obtain an applicant or licensee's criminal history record from the Department of Public Safety and from the Federal Bureau of Investigation. The board also may suspend or revoke a nurse's license for certain offenses, including a conviction of a felony or misdemeanor involving moral turpitude, which can include sexual assault of a child, indecent exposure, theft, aggravated assault, and other offenses.

DIGEST: CSHB 1366 would amend the Board of Nursing Examiner's licensure authority when a criminal offense was involved. Suspension of a license or refusal to issue a license would be added to the board's authority following an initial conviction of:

- murder, capital murder, or manslaughter;
- felony kidnapping or unlawful restraint;
- sexual assault, aggravated sexual assault;
- indecency with a child;
- aggravated assault;
- intentional or reckless harm of a child, elderly, or disabled individual, or intentional or reckless abandonment of a child;
- felony assisting suicide;
- felony violation of protective orders;

- selling or purchasing a child, or agreeing to abduct one from custody;
- robbery or aggravated robbery;
- offenses requiring registration as a sex offender; or
- any similar offense in another jurisdiction.

A final conviction would bar an applicant from licensure for five years following the date the person successfully completed and was released from community supervision or parole.

The bill would permit the board to establish a criminal investigations unit that would work with other agencies in the investigation and prosecution of crimes related to nursing. It would add deferred adjudication and deferred disposition to convictions for specific crimes as a basis for board action. It also would authorize the board to restrict a license, in addition to suspension for certain offenses.

CSHB 1366 also would require a nurse who applied for renewal of an expired license to pay for the cost of an administrative hearing if one was required to determine if a violation occurred.

The bill would take effect September 1, 2005, and would apply to offenses, licenses, and actions on or after that date.

**SUPPORTERS
SAY:**

CSHB 1366 would give the Board of Nurse Examiners the tools it needs to ensure that people who commit certain crimes are not licensed as nurses to care for patients. A recent article by the Dallas Morning News highlights the importance of conducting background checks for nurses. That news organization found a vocational nurse who previously had lost his teaching certificate after molesting a child working with children in a community health clinic. Although the board always has had the authority to conduct background checks, it has not had sufficient funding to do so. Both the House and Senate budget proposals would include some funding for more background checks. CSHB 1366 would grant the board the same powers as others regulating sensitive occupations, such as doctors or security guards.

A lack of funding to perform background checks is part of the problem, but this is exacerbated by the board's lack of authority to sanction nurses who had not been convicted and gone to jail for certain crimes. Many

offenders get deferred adjudication or probation for crimes. Their licenses also should be revoked or suspended.

The bill would not establish a lifetime ban on working in nursing. A nurse who completed a sentence or probation could reapply five years later. This would permit people who were rehabilitated to return to the profession. It also would permit restricted licenses, which would help the board tailor the license to areas where an individual could work. If someone had committed a crime against a child, working in a community clinic would not be appropriate, but working in a lab could be.

**OPPONENTS
SAY:**

The bill would not go far enough in protecting patients from bad nurses. Even though nurses could have their licenses suspended, restricted, or revoked for certain offenses, a bar on employment for a broader range of offenses also would be appropriate. SB 195 by Nelson would prohibit the employment of nurses with certain offenses on their records in agency nursing, hospice, and other settings where there is minimal supervision, similar to the prohibitions from employment in nursing homes that already exist in statute.

NOTES:

The committee substitute differs from the filed version in that it would create an investigating unit, rather than commission peace officers; would not include drug offenses in the suspension or bar to licensure; would permit reapplication for licensure five years after discharge of a conviction; and would not change the timeframes for hearings.

The companion bill, SB 1053 by Janek, was approved by the Senate on the local and uncontested calendar on April 14 and has been referred to the House Public Health Committee.