

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 3961  
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Health & Human Services  
5/11/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Board of Nursing (BON) has previously adopted rules on complaints and administrative penalties to provide clear guidance to nurses regarding complaints, confidentiality, sanctions, and administrative penalties. This bill would codify these rules to strengthen the role of BON in overseeing licensure and make changes to more closely reflect how other state licensing boards operate in terms of complaints, sanctions, and administrative penalties.

C.S.H.B. 3961 amends current law relating to the regulation of nursing.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Board of Nursing (BON) is modified in SECTION 5 (Section 301.1605, Occupations Code) of this bill.

Rulemaking authority is expressly granted to BON in SECTION 10 (Section 301.4521, Occupations Code) and SECTION 12 (Section 301.4535, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 301.155(c), Occupations Code, to require the Texas Board of Nursing (BON) to assess a surcharge of not less than \$3 or more than \$5, rather than a \$3 surcharge, for a registered nurse and a surcharge of not less than \$2 or more than \$3, rather than a \$2 surcharge, for a vocational nurse to the fee established by BON under Subsection (a) (relating to the requirement for BON to establish certain fees) for a license holder to renew a license under this chapter.

SECTION 2. Amends Section 301.157, Occupations Code, by amending Subsection (d-4) and adding Subsections (d-8), (d-9), (d-10), and (d-11), as follows:

(d-4) Authorizes BON to recognize and accept as approved under this section a school of nursing or educational program operated in another state and approved by a state board of nursing or other regulatory body of that state, rather than of another state. Requires BON to develop policies to ensure that the other state's, rather than the other state board's, standards are substantially equivalent to BON's standards.

(d-8) Provides that for purposes of Subsection (d-4), a nursing program is considered to meet standards substantially equivalent to BON's standards if the program:

- (1) is part of an institution of higher education located outside this state that is approved by the appropriate regulatory authorities of that state;
- (2) holds regional accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation;
- (3) holds specialty accreditation by an accrediting body recognized by the United States secretary of education and the Council for Higher Education Accreditation, including the National League for Nursing Accrediting Commission;

(4) requires program applicants to be a licensed practical or vocational nurse, a military service corpsman, or a paramedic, or to hold a college degree in a clinically oriented health care field with demonstrated experience providing direct patient care; and

(5) graduates students who achieve faculty-determined program outcomes, including passing criterion-referenced examinations of nursing knowledge essential to beginning a registered nursing practice and transitioning to the role of registered nurse; pass a criterion-referenced summative performance examination developed by faculty subject matter experts that measures clinical competencies essential to beginning a registered nursing practice and that meets nationally recognized standards for educational testing, including the educational testing standards for the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and pass the National Council Licensure Examination for Registered Nurses at a rate equivalent to the passage rate for students of approved in-state programs.

(d-9) Provides that a graduate of a clinical competency assessment program operated in another state and approved by a state board of nursing or other regulatory body of another state is eligible to apply for an initial license under this chapter if BON allowed graduates of the program to apply for an initial license under this chapter continuously during the 10-year period preceding January 1, 2007; the program does not make any substantial changes in the length or content of its clinical competency assessment without BON's approval; the program remains in good standing with the state board of nursing or other regulatory body in the other state; and the program participates in the research study under Section 105.008, Health and Safety Code.

(d-10) Defines "clinical competency assessment program" and "supervised clinical learning experiences program."

(d-11) Provides that Subsections (d-8), (d-9), (d-10), and (d-11) expire December 31, 2017. Requires the Sunset Advisory Commission, as part of the first review conducted under Section 301.003 (Application of Sunset Act) after September 1, 2009, to recommend whether Subsections (d-8) and (d-9) should be extended and recommend any changes to Subsections (d-8) and (d-9) relating to the eligibility for a license of graduates of a clinical competency assessment program operated in another state.

SECTION 3. Amends Section 301.160(a)(2), Occupations Code, to redefine "targeted continuing nursing education."

SECTION 4. Amends Sections 301.160(b) and (j), Occupations Code, as follows:

(b) Authorizes BON to develop pilot programs to evaluate the effectiveness of mechanisms, including proactive nursing peer review and targeted continuing nursing education, for maintenance of the clinical competency of a nurse, rather than registered nurse, in the nurse's area of practice and the understanding by nurses of the laws, including regulations, governing the practice of nursing. Makes conforming changes.

(j) Deletes existing text requiring BON to issue a final report not later than September 1, 2000. Makes conforming and nonsubstantive changes.

SECTION 5. Amends Sections 301.1605(a) and (c), Occupations Code, to authorize BON to approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of nursing, rather than professional nursing. Makes conforming changes.

SECTION 6. Amends Sections 301.1606(a) and (b), Occupations Code, as follows:

(a) Authorizes BON to solicit proposals, rather than requires BON, before January 1, 2004, to solicit proposals, for pilot programs designed to evaluate the efficacy and effect

on protection of the public of reporting systems designed to encourage identification of system errors.

(b) Makes conforming changes.

SECTION 7. Amends Subchapter E, Chapter 301, Occupations Code, by adding Sections 301.206 and 301.207, as follows:

Sec. 301.206. CONFIDENTIALITY OF INFORMATION COLLECTED FOR EMERGENCY RELIEF PROGRAMS. (a) Defines "emergency relief program."

(b) Provides that a nurse's personal contact information, including e-mail addresses, telephone numbers, and fax numbers, collected by BON for use by an emergency relief program is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, and is not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than for the purpose of contacting the nurse to assist in an emergency relief program.

Sec. 301.207. CONFIDENTIALITY OF HEALTH INFORMATION PROVIDED FOR LICENSURE. Provides that information regarding a person's diagnosis or treatment for a physical condition, mental condition, or chemical dependency that the person submits to BON for a petition for a declaratory order of eligibility for a license or for an application for an initial license or a license renewal under this chapter is confidential to the same extent information collected on a nurse as part of an investigation of a complaint is confidential under Section 301.466 (Confidentiality).

SECTION 8. Amends Section 301.257(a), Occupations Code, to authorize a person to petition BON for a declaratory order as to the person's eligibility for a license under this chapter if the person has reason to believe that the person is ineligible for the license and is enrolled or planning to enroll in an educational program that prepares a person for an initial license as a registered nurse or vocational nurse, or is an applicant for a license, rather than has reason to believe that the person is ineligible for the license.

SECTION 9. Amends Section 301.401(2), Occupations Code, to redefine "minor incident."

SECTION 10. Amends Subchapter J, Chapter 301, Occupations Code, by adding Section 301.4521, as follows:

Sec. 301.4521. PHYSICAL AND PSYCHOLOGICAL EVALUATION. (a) Defines "applicant" and "evaluation."

(b) Authorizes BON to require a nurse or applicant to submit to an evaluation only if BON has probable cause to believe that the nurse or applicant is unable to practice nursing with reasonable skill and safety to patients because of physical impairment, mental impairment, or chemical dependency or abuse of drugs or alcohol.

(c) Requires that a demand for an evaluation under Subsection (b) be in writing and state the reasons probable cause exists to require the evaluation, and state that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to be held to make a final determination of whether probable cause for the evaluation exists.

(d) Requires BON, if the nurse or applicant refuses to submit to the evaluation, to schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings (SOAH). Requires the nurse or applicant to be notified of the hearing by personal service or certified mail. Provides that the hearing is limited to the issue of whether BON had probable cause to require an evaluation. Authorizes the nurse or applicant to present testimony and other evidence at the hearing to show why the nurse or applicant should not be required

to submit to the evaluation. Provides that BON has the burden of proving that probable cause exists. Requires the hearing officer, at the conclusion of the hearing, to enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding BON's demand for an evaluation. Prohibits the order from being vacated or modified under Section 2001.058 (Hearing Conducted by State Office of Administrative Hearings), Government Code.

(e) Authorizes BON, if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under Subsection (d), to refuse to issue or renew a license, suspend a license, or issue an order limiting the license.

(f) Authorizes BON to request a nurse or applicant to consent to an evaluation by a practitioner approved by BON for a reason other than a reason listed in Subsection (b). Requires that a request for an evaluation under this subsection be in writing and state the reasons for the request, the type of evaluation requested, how the board may use the evaluation, that the nurse or applicant may refuse to submit to an evaluation, and the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license.

(g) Prohibits a nurse or applicant, if a nurse or applicant refuses to consent to the evaluation under Subsection (f), from introducing an evaluation into evidence at a hearing to determine the nurse or applicant's right to be issued or retain a nursing license unless the nurse or applicant performs certain actions.

(h) Requires BON to establish by rule the qualifications for a licensed practitioner to conduct an evaluation under this section. Requires BON to maintain a list of qualified practitioners. Authorizes BON to solicit qualified practitioners located throughout the state to be on the list.

(i) Requires the nurse or applicant to pay the costs of an evaluation conducted under this section.

(j) Provides that the results of an evaluation under this section are confidential and not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results are authorized to be introduced as evidence in a proceeding before BON or a hearing conducted by SOAH under this chapter, or included in the findings of fact and conclusions of law in the final board order.

(k) Requires that the evaluation be expunged from BON's records if BON determines there is insufficient evidence to bring action against a person based on the results of any evaluation under this section.

(l) Requires BON to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation under this section.

(m) Provides that the authority granted to BON under this section is in addition to BON's authority to make licensing decisions under this chapter.

#### SECTION 11. Amends Sections 301.453(a) and (b), Occupations Code, as follows:

(a) Requires BON, if BON determines that a person has committed an act listed in Section 301.452(b) (relating to a person subject to denial of license or to disciplinary action for certain reasons), to enter an order imposing certain actions, including suspension of the person's license, rather than suspension of the person's license for a period not to exceed five years.

(b) Authorizes BON, in addition to or instead of an action under Subsection (a), by order to require the person to perform certain actions, including a program of remedial education.

SECTION 12. Amends Section 301.4535, Occupations Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Provides that an applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under Subsection (a) (relating to the nurse or applicant having certain convictions) is not eligible for a probationary, stipulated, or otherwise encumbered license unless BON establishes by rule criteria that would permit the issuance or renewal of the license.

(b) Deletes existing text prohibiting BON, as appropriate, on final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), from issuing a license to an applicant, and requiring BON to refuse to renew a license or revoke a license if the applicant or license holder did not previously disclose the conviction or plea and the fifth anniversary of the date the person successfully completed community supervision or parole has not occurred.

SECTION 13. Amends Subchapter J, Chapter 301, Occupations Code, by adding Section 301.4551, as follows:

Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR ALCOHOL USE. Requires BON to temporarily suspend the license of a nurse as provided by Section 301.455 (Temporary License Suspension or Restriction) if the nurse is under a BON order prohibiting the use of alcohol or a drug or requiring the nurse to participate in a peer assistance program, and the nurse tests positive for alcohol or a prohibited drug, refuses to comply with a BON order to submit to a drug or alcohol test, or fails to participate in the peer assistance program and the program issues a letter of dismissal and referral to BON for noncompliance.

SECTION 14. Amends Section 301.468, Occupations Code, by amending Subsection (a) and adding Subsections (e) and (f), as follows:

(a) Authorizes BON to determine that an order denying a license application or suspending a license be probated. Requires a person subject to a probation order to conform to certain conditions BON sets as the terms of probation, including requiring the person to submit to random drug or alcohol tests in the manner prescribed by BON. Makes a nonsubstantive change.

(e) Provides that a hearing under this section is limited to a determination of whether the person violated the terms of the probation order under Subsection (a) and whether BON should continue, rescind, or modify the terms of the probation, including imposing an administrative penalty, or enter an order denying, suspending, or revoking the person's license.

(f) Provides that if one of the conditions of probation is the prohibition of using alcohol or a drug or participation in a peer assistance program, violation of that condition is established by a positive drug or alcohol test result, refusal to submit to a drug or alcohol test as required by BON, or a letter of noncompliance from the peer assistance program.

SECTION 15. Amends Section 63.202(f), Education Code, to require that grants awarded under Subsection (c) (relating to the use of money in the permanent fund for higher education nursing, allied health, and other health-related programs (fund) established under this subchapter) for the state fiscal biennium ending on August 31, 2009, and the fiscal biennium ending on August 31, 2011, by THECB, notwithstanding the limitation provided by Subsection (b) (relating to the use of investment returns of the fund), be awarded to programs preparing students for initial licensure as registered nurses or programs preparing qualified faculty members with a master's or doctoral degree for the program, including programs at two-year institutions of higher education, four-year general academic teaching institutions, health science centers, and independent or private institutions of higher education, or to the nursing resource section established under Section 105.002(b) (relating to the establishment of a nursing resource section within a center), Health and Safety Code. Authorizes THECB, in awarding grants under this section, to perform

certain actions, including funding a study by the nursing resource section to evaluate the competencies of clinical judgment and behaviors that professional nursing students should possess at the time of graduation.

SECTION 16. Amends Chapter 105, Health and Safety Code, by adding Section 105.008, as follows:

Sec. 105.008. STUDY OF ALTERNATE WAYS TO ASSURE CLINICAL COMPETENCY OF GRADUATES OF NURSING EDUCATIONAL PROGRAMS. (a) Defines "clinical competency assessment program," "professional nursing prelicensure program," "research study," and "supervised clinical learning experiences program."

(b) Requires the nursing resource section established under Section 105.002(b), to the extent funding is available, to conduct a research study to identify:

(1) a set of expected student outcomes in terms of clinical judgment and behaviors that professional nursing students should possess at the time of graduation from a professional nursing prelicensure program;

(2) standardized, reliable, and valid clinical exit evaluation tools that could be used to evaluate the competencies in clinical judgment and behaviors that professional nursing students possess at the time of graduation from a professional nursing prelicensure program;

(3) any correlation between the success rate of graduates of professional nursing prelicensure programs on standardized clinical exit evaluation tools and their educational and experiential background, including certain factors; and

(4) any correlation between the required number of hours in supervised clinical learning experiences and expected student outcomes in terms of clinical judgment and behaviors.

(c) Requires that the research study, in addition to any other objective, be designed to determine if the graduates of a clinical competency assessment program are substantially equivalent to the graduates of supervised clinical learning experiences programs in terms of clinical judgments and behaviors. Requires that the clinical competency assessment program, for purposes of this subsection, be one that has been requiring a clinical competency assessment for at least 10 years, has students who reside in this state, has graduates who have been considered by BON to be eligible to apply for a registered nurse license as a result of graduating from the program on or before January 1, 2007, and conducts the clinical competency assessment at a facility or facilities located in this state under the supervision of a qualified clinical faculty member who is a registered nurse and who holds a master's or doctoral degree in nursing.

(d) Requires that considerations to be used in determining substantial equivalence under Subsection (c) include the differences between the clinical competency assessment program and the supervised clinical learning experiences program in the methods of evaluating students' clinical judgment and behaviors, performance on standardized clinical exit evaluation tools, the ability of graduates to transition to and assimilate in the registered nurse's role, and passage rates on the National Council Licensure Examination.

(e) Requires the nursing resource section to contract with an independent researcher to develop the research design and conduct the research. Requires that the independent researcher be selected by a selection committee composed of certain members.

(f) Requires the nursing resource section to complete the study not later than June 30, 2014, and submit a report to the office of the governor, the Senate Committee

on Health and Human Services, and the House Committee on Public Health. Requires that the report include a research abstract prepared by the independent researcher.

(g) Authorizes the nursing resource section to cooperate with BON and THECB in conducting the study.

(h) Requires the nursing advisory committee formed under Section 104.0155 (Nursing Advisory Committee) to serve as the oversight committee for the study.

(i) Provides that any data collected as part of the study that contains information identifying specific students, patients, or health care facilities is confidential, is not subject to disclosure under Chapter 552, Government Code, and is prohibited from being released unless all identifying information is removed.

(j) Authorizes the nursing resource section, in addition to funds appropriated by the legislature, to solicit, receive, and spend grants, gifts, and donations from public or private sources for the purposes of conducting the study.

(k) Requires the nursing resource section, if grants or other funds are available through the National Council of State Boards of Nursing that could be used to fund the study, to apply for the funds to the maximum amount available up to the estimated cost of the study. Prohibits the nursing resource section, in making the application or accepting the funds, from relinquishing any oversight responsibility for the study, including responsibility for designing and conducting the research or developing the findings.

SECTION 17. Repealer: Section 301.202(b) (relating to the requirement that BON enter into a memorandum of understanding with each state agency that licenses health care facilities or agencies), Occupations Code.

SECTION 18. (a) Makes application of Section 301.4521, Occupations Code, as added by this Act, prospective.

(b) Makes application of Section 301.4551, Occupations Code, as added by this Act, and Section 301.468, Occupations Code, as amended by this Act, prospective.

SECTION 19. Effective date: upon passage or September 1, 2009.