

BILL ANALYSIS

C.S.H.B. 2426
By: Truitt
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas began regulating nurses in 1909, with the passage of the Nurse Practice Act and the creation of the Board of Nurse Examiners and the establishment of standards for licensure. In 1951, the Legislature distinguished between professional – or registered – nurses and vocational nurses by establishing the Texas Board of Vocational Nurse Examiners and creating a separate licensing act for vocational nurses. The Legislature combined the two boards and their licensing acts in 2003. The Board's main functions include licensing qualified individuals to practice professional nursing and vocational nursing; authorizing qualified professional nurses to practice as advanced practice nurses; establishing standards for and approving nursing education programs; and investigating and taking disciplinary action when necessary to enforce the Nursing Practice Act and Board rules.

The Board is subject to the Sunset Act and will be abolished on September 1, 2007, unless continued by the Legislature. The Sunset Commission found that the State has a continuing need for the Board, but identified areas that could be improved to streamline the Board's process for approving nursing education programs and to improve other regulatory processes to protect the safety, health, and welfare of Texans.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Board of Nurse Examiners, renamed the Texas Board of Nursing in SECTION 12, SECTION 14, SECTION 18, SECTION 19, SECTION 23, SECTION 25, SECTION 26, SECTION 27, SECTION 28, SECTION 30, and SECTION 74 of this bill.

ANALYSIS

Renames the Board of Nurse Examiners

C.S.H.B. 2426 changes the name of the agency from the Board of Nurse Examiners to the Texas Board of Nursing.

Streamlines the Nurse Board's process for approving nursing education programs

C.S.H.B. 2426 provides for the Board to select one or more national nursing accrediting agencies recognized by the U.S. Department of Education and that meet the Board's standards to accredit nursing educational programs for purposes of ensuring the quality of education for nursing graduates applying for nursing licenses. The bill also provides for the Board to withdraw approval of a nursing educational program that fails to meet or maintain the standard under which it was approved by the Board, whether the program was approved by accreditation or by another state board of nursing and the board. An educational program is exempt from ongoing approval by the Board, except regarding the submission of reports and other information needed for workforce analysis, if the program is accredited by a Board-approved nursing accrediting agency and maintains an acceptable pass rate on the nurse licensing examination. Programs with unacceptable examination pass rates are subject to Board review and the Board may help them achieve compliance with the Board's standards. The bill requires accredited programs to provide the Board with reports to or from the agency that accredits them, to notify the Board of any change in accreditation status, and to provide other information as determined necessary by the Board for nursing education and workforce policy analysis. Programs that have had approval withdrawn may reapply for approval.

C.S.H.B. 2426 authorizes the Board to accept as approved for educational and licensing purposes, a nursing education program in another state if the program is approved by that state's nursing board and requires the Texas Board to develop policies to ensure the other state's board meets the Texas Board's standards. The bill also specifies that the Nursing Practice Act does not apply to students in an educational program approved by the Board through this process.

C.S.H.B. 2426 requires the Board to streamline its initial approval process by identifying and eliminating tasks that are duplicated or overlap between the Board and the Texas Higher Education Coordinating Board (Coordinating Board) and the Texas Workforce Commission. The Board must work with these agencies to establish guidelines regarding initial program approval to be made available in writing and on the Board's website, identifying the approval processes by the Coordinating Board and Workforce Commission and specifying that approval by either of these agencies must precede the Board's approval. The bill also provides for the Board's authority to approve nursing education programs leading to initial licensure as a registered or vocational nurse. The bill prohibits the Board from requiring nursing schools and educational programs to be accredited as a higher education institution, and instead requires the Board to accept the Coordinating Board's requirements for accrediting these institutions.

Requires diploma programs to be affiliated with institution of higher education

The bill requires hospital-based diploma programs that lead to initial licensure as a registered nurse in Texas to entitle a student to receive a degree on successful completion of a degree program of an institution of higher education in this state on or after December 31, 2014.

Requires innovation to increase enrollment in nursing programs

The Board, in collaboration with nurse education stakeholders and the Coordinating Board, must implement a plan for the creation of innovative models for nursing education that promote increased enrollment in Texas nursing programs.

Clarifies use of criminal history and arrest information in licensing and disciplining nurses

The bill requires the Board to adopt rules and guidelines to define crimes relating to an individual's ability to practice nursing in making licensing and disciplinary decisions. The Board must list offenses for which both conviction and deferred adjudication would provide grounds for Board action. The Board must establish guidelines for the use of arrest information when determining an applicant's eligibility for licensure or disciplining a nurse to ensure fair and consistent use that relates to the practice of nursing.

Requires reporting to the Board regarding impaired nurses suspected of committing practice violations

C.S.H.B. 2426 provides for third parties who already have an obligation to report impaired nurses to peer assistance to report to the Board when a practice violation occurs as a result of a nurse's chemical dependency or diminished mental capacity. The Board must determine if a nurse violated the Nursing Practice Act in cases in which the nurse is impaired or suspected of being impaired and is suspected of committing a practice violation. The Board must develop guidelines regarding information sharing and communication between the Board and its peer assistance provider.

Establishes a process for use of advisory committees

The bill establishes a process for the Board to appoint advisory committees to perform advisory functions and to provide independent expertise on Board functions and policies and requires the Board to adopt rules regarding the purpose, structure, and use of advisory committees. Board members may not serve on an advisory committee, but may serve as a liaison to clarify the Board's charge and intent, but not as a required participant. The bill also repeals provisions related to outdated advisory committees and pilot programs.

Adopts the Advanced Practice Registered Nurse Multistate Compact

C.S.H.B. 2426 enacts and enters into the National Council of State Boards of Nursing (NCSBN) Advanced Practice Registered Nurse Compact to provide for cooperation of party states for licensure, authority to practice, and regulation of advanced practice nurses. The bill contains the entire Compact, including findings; definitions; general provisions regarding party states; authority of advanced practice nurses to practice in a party state; authority of states to take adverse and other actions; and provisions for a coordinated licensure information system,

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compact administration, immunity, entry into force, and construction and severability. The bill also specifies the authority of the Board under compact and provides for the Board to adopt rules necessary for implementation of the Compact by December 31, 2011 or the authority to implement the Compact expires.

Strengthens the Board's oversight of targeted continuing education

The bill authorizes the Board to establish guidelines for targeted continuing education of nurses specifying the nurses affected, the types of courses required, the time frames for completing the requirement, the frequency of the requirement, and other requirements.

Conforms key elements of the Board's licensing and regulatory functions to commonly applied licensing practices

C.S.H.B. 2426 requires applicants for license as a nurse to pass a jurisprudence exam regarding licensing requirements in law and Board rule and other laws and regulations applicable to the nursing profession in Texas. The Board must establish rules regarding examination development, fees, administration, reexamination, grading and notice of results and must begin administering the exam by September 1, 2008 for individuals applying for licensure on or after that date. The bill also requires the Board to adopt guidelines detailing procedures for the nurse licensure examination and to post on its website policies referencing the testing procedures by the national organization that administers the exam. The Board must develop a written refund policy regarding examination fees and allows the Board to recommend to the national testing service a refund of examination fees under certain circumstances and it must establish late fees in an amount considered appropriate by the Board to encourage timely renewal.

C.S.H.B. 2426 also requires the Board to establish, by rule, a schedule of disciplinary sanctions to be imposed against nurses who violate state laws or Board rules to ensure that the severity of the sanction is appropriate to the type of violation or conduct, and it outlines the factors to be considered in determining the appropriate disciplinary action. The bill also requires the Board to develop a method for analyzing the sources and types of complaints and violations to identify trends and regulatory problem areas to focus its information and education efforts. The bill authorizes the Board to allow staff to dismiss certain complaints and provides for staff reporting of administratively dismissed complaints to the Board. The bill increases the amount of administrative penalty from \$2,500 to \$5,000 for each violation. It also authorizes the Board to order a refund as part of an agreement resulting from an informal settlement conference and specifies that the amount of refund may not exceed the amount the consumer paid the licensee and that the Board may not require payment of other damages or estimate harm. The bill authorizes the Board to issue cease and desist orders to stop unlicensed activity and makes violation of such an order subject to an administrative penalty. The bill removes the prohibition against Board members receiving reimbursement for travel expenses, so that they would be able to receive reimbursement for all travel expenses, including transportation, meals, and lodging.

Applies standard Sunset across-the-board recommendations

C.S.H.B. 2426 adds standard Sunset language requiring the Board to make effective use of technology in its delivery of services and provision of information to the public and requiring the Board to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution. The bill also updates standard Sunset language regarding public members on the Board not having financial ties to the agency or the regulated industry; prohibiting Board members, high-level employees, and spouses from holding certain positions in a related Texas trade association; specifying grounds for removing a Board member; requiring members of the Board to complete training before assuming their duties; and requiring the Board to maintain information on all complaints and notify the parties about policies for and status of complaints.

Continuation of the Board

C.S.H.B. 2426 changes the Board's Sunset review date to 2017 to continue the agency for 10 years.

Instructional Provisions

C.S.H.B. 2426 requires the Board to adopt rules required in the bill by January 1, 2008. The bill also provides that changes made regarding the Board's enforcement authority apply only to complaints filed on or after September 1, 2007 and that changes regarding eligibility for licensure apply only to applications filed on or after September 1, 2007. Changes regarding C.S.H.B. 2426 80(R)

conduct that is grounds for disciplinary action apply only to conduct that occurs on or after September 1, 2007. The bill requires the Board to comply with and implement nonstatutory recommendations adopted by the Sunset Commission that relate to the Board and requires the Board to report to the Sunset Commission regarding its implementation of these nonstatutory recommendations no later than November 1, 2008. The bill also clarifies that a reference in any other law to the former Board of Nurse Examiners means the Texas Board of Nursing and specifies that Board members continue to serve as members of the Texas Board of Nursing for the remainder of their terms.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2426 modifies the original bill by changing the name of the Board from the “Board of Nurse Examiners” to “Texas Board of Nursing,” and updates references in the Nursing Practice Act and other statutes to reflect the name change. The substitute adds language to clarify that a reference in any other law to the former Board of Nurse Examiners means the Texas Board of Nursing. The substitute also adds language to specify that the name is changed on the effective date of the Act and that Board members serving on that date continue to serve as members of the Texas Board of Nursing for the remainder of their terms.

C.S.H.B. 2426 deletes the word “specific” from the original bill, regarding the type of offenses for which a conviction or placement on deferred adjudication community supervision would constitute grounds for Board enforcement action.

C.S.H.B. 2426 modifies language to clarify that a diploma program of study completed on or after December 31, 2014, must entitle a student to receive a degree on successful completion of a degree program of an institution of higher education in this state. The original bill had provided for a diploma program to be associated with a degree program on or after that same date.

The substitute changes the word “approve” in the original bill to “accredit” regarding the action performed by national nursing accrediting agencies in evaluating nursing schools and educational programs.

The substitute adds language to clarify that the Board’s action to deny or withdraw approval from a nursing school or educational program relates to the school or program’s failure to meet or maintain the standard under which it was approved or deemed approved by the Board. The Board could deny or withdraw this approval if the school or program fails to meet the Board’s standards, fails to maintain accreditation under which it was approved by the Board, or fails to maintain approval by another state board of nursing and the board under which it was approved.

C.S.H.B. 2426 adds language to prohibit the Board from requiring nursing schools and educational programs to be accredited as a higher education institution, and instead require it to accept the Texas Higher Education Coordinating Board’s requirements for accrediting these institutions.

The substitute adds language to clearly link the language in the original bill regarding the approval of nursing schools and educational programs by other state boards of nursing to the provisions in the original bill for the Board’s process for providing that approval.

C.S.H.B. 2426 adds language to specify that nursing schools and educational programs that are properly accredited and that maintain an acceptable pass rate are exempt from Board rules for ongoing approval except as provided regarding the submission of reports and other information needed for workforce analysis. The substitute adds language requiring these schools and educational programs to provide the Board with copies of any reports submitted to or received from the national nursing accrediting agency under which the schools or programs are accredited and considered approved by the Board; to notify the Board of any change in accreditation status; and to provide other information as determined necessary by the Board to establish and evaluate nursing education and workforce policy in Texas.

The substitute deletes language in the original version that had prohibited Board member liaisons to advisory committees from being entitled to travel expenses for advisory committee meetings that they attend.

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C.S.H.B. 2426 reinstates existing statutory language that had been struck in the original bill regarding notifying parties to complaints of the status of the complaint “unless notice would jeopardize an undercover investigation.”

C.S.H.B. 2426 modifies the language in the original version regarding the late renewal of licenses to establish late fees in an amount considered appropriate by the Board to encourage timely renewal. The substitute also deletes changes contained in the original version to reinstate existing statutory language regarding expired licenses.

The substitute modifies the language in the original version to authorize the Board to issue a cease-and-desist order and to report unlicensed activity to a local law enforcement agency or attorney general for prosecution – before notice or hearing, as long as institution of proceedings for a hearing before the Board is initiated simultaneously with the issuance of the cease-and-desist order.

The substitute adds an instructional provision to the bill requiring the Board to comply with and implement nonstatutory recommendations adopted by the Sunset Commission that relate to the Board and requiring the Board to report to the Sunset Commission regarding its implementation of these nonstatutory recommendations no later than November 1, 2008.