

## **BILL ANALYSIS**

C.S.H.B. 3961  
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Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

C.S.H.B. 3961 makes a number of changes to the Nursing Practice Act that the Texas Board of Nursing identified as necessary to correct technical errors and improve the regulation of the practice of nursing. The changes range from clarifying and refining amendments to substantive changes, including establishing the board's authority to require physical and psychological evaluations.

C.S.H.B. 3961 makes personal contact information collected by the board confidential, establishes the board's authority to require physical and psychological evaluations, authorizes the board to temporarily suspend a nurse's licensure on proof of a positive drug screening or dismissal from a board-ordered peer assistance program, authorizes the board to require random drug screening as a condition of probation, and limits probation revocation hearings to the issue of whether the nurse violated the terms of probation.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Nursing in SECTIONS 8 and 10 of this bill.

### **ANALYSIS**

C.S.H.B. 3961 amends the Occupations Code to provide for the confidentiality of a nurse's personal contact information collected by the Texas Board of Nursing for use by an emergency relief program. The bill provides for the confidentiality of information regarding a person's diagnosis or treatment for a physical condition, mental condition, or chemical dependency that the person submits to the board for a petition for a declaratory order of eligibility for a nursing license or for an application for an initial nursing license or a license renewal. The bill defines "emergency relief program."

C.S.H.B. 3961 authorizes the board to require a nurse or applicant to submit to a physical or psychological evaluation only if the board 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. The bill requires a demand for evaluation under the bill to be in writing and to state the reasons why probable cause exists to require the evaluation and that refusal by the nurse or applicant to submit to the evaluation will result in an administrative hearing to make a final determination regarding the existence of probable cause. The bill requires the board to schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings (SOAH) if the nurse or applicant refuses to submit to the evaluation. The bill requires the nurse or applicant to be notified of the hearing by personal service or certified mail and establishes that the hearing is limited to the issue of whether the board had probable cause to require an evaluation. The bill authorizes the nurse or applicant to present testimony and other evidence at the hearing to show why the person should not be required to submit to the evaluation. The bill establishes that the board has the burden of proving that probable cause exists. The bill requires,

at the conclusion of the hearing, the hearing officer to enter an order requiring the nurse or applicant to submit to the evaluation or an order rescinding the board's demand for an evaluation. The bill prohibits the order from being vacated or modified by the board. The bill authorizes the board to refuse to issue or renew a license, to suspend a license, or to issue an order limiting the license if a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under the bill's provisions.

C.S.H.B. 3961 authorizes the board to request a nurse or applicant to consent to an evaluation by a practitioner approved by the board for a reason other than those described in the bill. The bill requires the request for the evaluation to be in writing and to 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. The bill prohibits a nurse or applicant who refuses to consent to the evaluation from introducing an evaluation into evidence at a hearing to determine that person's right to be issued or to retain a nursing license unless the nurse or applicant, not later than the 30th day before the date of the hearing, notifies the board that an evaluation will be introduced into evidence at the hearing; provides the board the results of that evaluation; informs the board of any other evaluations by any other practitioners; and consents to an evaluation by a practitioner that meets board standards established under provisions of the bill. The bill requires the board to establish by rule the qualifications for a licensed practitioner to conduct an evaluation. The bill requires the board to maintain a list of qualified practitioners and authorizes the board to solicit qualified practitioners located throughout the state to be on the list. The bill requires a nurse or applicant to pay the costs of an evaluation conducted and provides for the confidentiality of the results of the evaluation. The bill requires an evaluation to be expunged from the board's records if the board determines there is insufficient evidence to bring action against a person based on the results of any evaluation. The bill requires the board to adopt guidelines for requiring or requesting a nurse or applicant to submit to an evaluation. The bill establishes that the authority granted to the board relating to a physical or psychological evaluation is in addition to the board's authority to make licensing decisions. The bill defines "applicant" and "evaluation."

C.S.H.B. 3961 requires the board to temporarily suspend the license of a nurse, if the nurse is under a board 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 board 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 the board for noncompliance. The bill adds to the conditions the board is authorized to set as a term of probation the requirement that the person subject to the probation order submit to random drug or alcohol tests in the manner prescribed by the board. The bill limits a hearing relating to a probation order to a determination of whether the person violated the terms of the probation order and whether the board should continue, rescind, or modify the terms of probation, including imposing an administrative penalty, or enter an order denying, suspending, or revoking the person's license. The bill establishes 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 the board, or a letter of noncompliance from the peer assistance program.

C.S.H.B. 3961 makes technical changes to remove references to registered nurses and professional nursing and to remove an expired provision. The bill makes a technical change to authorize, rather than require, the board 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, and removes an obsolete deadline for that requirement.

C.S.H.B. 3961 clarifies that an applicant for a nursing license is authorized to petition the board for a declaratory order as to the person's eligibility for a license. The bill amends the definition

of "minor incident" under provisions relating to reporting violations and patient care concerns to establish that the term is synonymous with "minor error" or "minor violation of this chapter or board rule," with respect to provisions regarding nurses.

C.S.H.B. 3961 removes the five-year limitation on the duration of time for which a person's license may be suspended if the board determines the person committed an act that provides grounds for disciplinary action. The bill clarifies that the board's authority to require a person to participate in a program of education or counseling as an alternative to other disciplinary actions includes a program of remedial education. The bill establishes that an applicant or nurse who is refused an initial license or renewal of a license, or whose license is suspended on proof that the person has been initially convicted of certain criminal offenses is not eligible for a probationary, stipulated, or otherwise encumbered license unless the board establishes by rule criteria that would permit the issuance or renewal of the license. The bill removes from the provision under which the board is prohibited from issuing a license, required to refuse license renewal, or required to revoke a license on final conviction or a plea of guilty or nolo contendere for certain criminal offenses the condition that the applicant or license holder did not previously disclose a conviction or plea and the fifth anniversary of the date the person successfully completed community supervision or parole has not occurred, such that the prohibition and requirements apply generally.

C.S.H.B. 3961 repeals Section 301.202(b), Occupations Code, relating to a method by which consumers and service recipients are notified of contact information for purposes of filing a complaint.

#### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 3961 adds a provision not in the original to include in the information that must be stated in writing in a Texas Board of Nursing request for a physical and psychological evaluation the procedures for submitting an evaluation as evidence in any hearing regarding the issuance or renewal of the nurse's or applicant's license. The substitute removes language in the original that excepted a nurse or applicant from provisions making the results of an evaluation not subject to disclosure for release to anyone. The substitute removes language in the original specifying that guidelines the board is required to adopt for requiring or requesting a nurse or applicant to submit to an evaluation are to be adopted by rule. The substitute differs from the original by making nonsubstantive technical changes.