

**House Bill 3961**  
Senate Amendments  
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HOUSE VERSION

No equivalent provision.

SENATE VERSION

SECTION 1. Section 301.155(c), Occupations Code, is amended to read as follows:

(c) The board shall assess a [~~\$3~~] surcharge of not less than \$3 or more than \$5 for a registered nurse and a [~~\$2~~] surcharge of not less than \$2 or more than \$3 for a vocational nurse to the fee established by the board under Subsection (a) for a license holder to renew a license under this chapter. The board may use nine cents of the registered nurse surcharge and six cents of the vocational nurse surcharge to cover the administrative costs of collecting and depositing the surcharge. The board quarterly shall transmit the remainder of each surcharge to the Department of State Health Services to be used only to implement the nursing resource section under Section 105.002, Health and Safety Code. The board is not required to collect the surcharge if the board determines the funds collected are not appropriated for the purpose of funding the nursing resource section.

CONFERENCE

No equivalent provision.

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

(d-4) The board may 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 [~~another~~] state. The board shall develop policies to

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ensure that the other state's [state-board's] standards are substantially equivalent to the board's standards.

(d-8) For purposes of Subsection (d-4), a nursing program is considered to meet standards substantially equivalent to the board'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:

(A) 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;

(B) pass a criterion-referenced summative performance examination developed by faculty subject matter experts

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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 of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and

(C) 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) 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:

(1) the board allowed graduates of the program to apply for an initial license under this chapter continuously during the 10-year period preceding January 1, 2007;

(2) the program does not make any substantial changes in the length or content of its clinical competency assessment without the board's approval;

(3) the program remains in good standing with the state board of nursing or other regulatory body in the other state; and

(4) the program participates in the research study under Section 105.008, Health and Safety Code.

(d-10) In this section, the terms "clinical competency assessment program" and "supervised clinical learning experiences program" have the meanings assigned by

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Section 105.008, Health and Safety Code.  
(d-11) Subsections (d-8), (d-9), (d-10), and (d-11) expire  
December 31, 2017. As part of the first review conducted  
under Section 301.003 after September 1, 2009, the  
Sunset Advisory Commission shall:  
(1) recommend whether Subsections (d-8) and (d-9)  
should be extended; and  
(2) 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 1. Section 301.160(a)(2), Occupations Code, is amended to read as follows:

(2) "Targeted continuing nursing education" means continuing education focusing on a skill that would likely benefit a significant proportion of ~~registered~~ nurses in a particular practice area.

SECTION 2. Sections 301.160(b) and (j) are amended to read as follows:

(b) The board may 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 ~~registered~~ nurse in the nurse's area of practice and the understanding by ~~registered~~ nurses of the laws,

SECTION 3. Same as House version.

SECTION 4. Same as House version.

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including regulations, governing the practice of [professional] nursing.

(j) The board shall issue an annual report regarding any pilot programs developed or approved and a status report on those programs, including preliminary or final findings concerning their effectiveness. The board shall mail the report to statewide associations of [registered] nurses and ~~[, registered nurse]~~ educators[;] and employers of [registered] nurses that request a copy. ~~[The board shall issue a final report not later than September 1, 2000.]~~

SECTION 3. Sections 301.1605(a) and (c), Occupations Code, are amended to read as follows:

(a) The board may approve and adopt rules regarding pilot programs for innovative applications in the practice and regulation of [professional] nursing.

(c) In approving a pilot program, the board may grant the program an exception to the mandatory reporting requirements of Sections 301.401-301.409 or to a rule adopted under this chapter or Chapter 303 that relates to the practice of [professional] nursing, including education and reporting requirements for [registered] nurses. The board may not grant an exception to:

(1) the education requirements of this chapter unless the program includes alternate but substantially equivalent requirements; or

(2) the mandatory reporting requirements unless the

SECTION 5. Same as House version.

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program:

(A) is designed to evaluate the efficiency of alternative reporting methods; and

(B) provides consumers adequate protection from ~~registered~~ nurses whose continued practice is a threat to public safety.

SECTION 4. Sections 301.1606(a) and (b), Occupations Code, are amended to read as follows:

(a) ~~The [Before January 1, 2004, the]~~ board ~~may [shall]~~ 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) The board may grant a pilot program approved under this section an exception to the mandatory reporting requirements of Sections 301.401-301.409 or to a rule adopted under this chapter or Chapter 303 that relates to the practice of ~~professional~~ nursing, including education and reporting requirements for ~~registered~~ nurses. If the board grants an exception, the board may require that the program:

(1) provide for the remediation of the deficiencies of a ~~registered~~ nurse who has knowledge or skill deficiencies that unless corrected may result in an unreasonable risk to public safety;

(2) provide for supervision of the nurse during remediation of deficiencies under Subdivision (1);

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- (3) require reporting to the board of a ~~[registered]~~ nurse:
  - (A) who fails to satisfactorily complete remediation, or who does not make satisfactory progress in remediation, under Subdivision (1);
  - (B) whose incompetence in the practice of ~~[professional]~~ nursing would pose a continued risk of harm to the public; or
  - (C) whose error contributed to a patient death or serious patient injury; or
- (4) provide for a nursing peer review committee to review whether a ~~[registered]~~ nurse is appropriate for remediation under Subdivision (1).

SECTION 5. Subchapter E, Chapter 301, Occupations Code, is amended by adding Sections 301.206 and 301.207 to read as follows:

Sec. 301.206. CONFIDENTIALITY OF INFORMATION COLLECTED FOR EMERGENCY RELIEF PROGRAMS. (a) In this section, "emergency relief program" means a program operated or sponsored by the federal government, the state, or a nonprofit organization to provide nurses to assist in providing health care to victims or potential victims of a disaster or state or local emergency.  
(b) A nurse's personal contact information, including e-mail addresses, telephone numbers, and fax numbers, collected by the board for use by an emergency relief program is:

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(1) confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) 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.

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 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.

SECTION 6. Section 301.257(a), Occupations Code, is amended to read as follows:

(a) A person may petition the board 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:

(1) 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 [and]~~

(2) ~~is an applicant for a [has reason to believe that the~~

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~~person is ineligible for the] license.~~

SECTION 7. Section 301.401(2), Occupations Code, is amended to read as follows:

(2) "Minor incident" means conduct by a nurse that does not indicate that the nurse's continued practice poses a risk of harm to a patient or another person. This term is synonymous with "minor error" or "minor violation of this chapter or board rule."

SECTION 8. Subchapter J, Chapter 301, Occupations Code, is amended by adding Section 301.4521 to read as follows:

Sec. 301.4521. PHYSICAL AND PSYCHOLOGICAL EVALUATION. (a) In this section:

(1) "Applicant" means:

(A) a petitioner for a declaratory order of eligibility for a license; or

(B) an applicant for an initial license or renewal of a license.

(2) "Evaluation" means a physical or psychological evaluation conducted to determine a person's fitness to practice nursing.

(b) The board may require a nurse or applicant to submit to an 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

SECTION 9. Same as House version.

SECTION 10. Same as House version.

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because of:

(1) physical impairment;

(2) mental impairment; or

(3) chemical dependency or abuse of drugs or alcohol.

(c) A demand for an evaluation under Subsection (b) must be in writing and state:

(1) the reasons probable cause exists to require the evaluation; and

(2) 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) If the nurse or applicant refuses to submit to the evaluation, the board shall schedule a hearing on the issue of probable cause to be conducted by the State Office of Administrative Hearings. The nurse or applicant must be notified of the hearing by personal service or certified mail. The hearing is limited to the issue of whether the board had probable cause to require an evaluation. The nurse or applicant may present testimony and other evidence at the hearing to show why the nurse or applicant should not be required to submit to the evaluation. The board has the burden of proving that probable cause exists. At the conclusion of the hearing, the hearing officer shall 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 order may not be vacated or modified under Section 2001.058, Government Code.

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(e) If a nurse or applicant refuses to submit to an evaluation after an order requiring the evaluation is entered under Subsection (d), the board may:

(1) refuse to issue or renew a license;

(2) suspend a license; or

(3) issue an order limiting the license.

(f) The board may request a nurse or applicant to consent to an evaluation by a practitioner approved by the board for a reason other than a reason listed in Subsection (b). A request for an evaluation under this subsection must be in writing and state:

(1) the reasons for the request;

(2) the type of evaluation requested;

(3) how the board may use the evaluation;

(4) that the nurse or applicant may refuse to submit to an evaluation; and

(5) 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) If a nurse or applicant refuses to consent to an evaluation under Subsection (f), the nurse or applicant may not introduce an evaluation into evidence at a hearing to determine the nurse's or applicant's right to be issued or retain a nursing license unless the nurse or applicant:

(1) 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;

(2) provides the board the results of that evaluation;

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(3) informs the board of any other evaluations by any other practitioners; and

(4) consents to an evaluation by a practitioner that meets board standards established under Subsection (h).

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

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

(j) The results of an evaluation under this section are:

(1) confidential and not subject to disclosure under Chapter 552, Government Code; and

(2) not subject to disclosure by discovery, subpoena, or other means of legal compulsion for release to anyone, except that the results may be:

(A) introduced as evidence in a proceeding before the board or a hearing conducted by the State Office of Administrative Hearings under this chapter; or

(B) included in the findings of fact and conclusions of law in a final board order.

(k) If the board determines there is insufficient evidence to bring action against a person based on the results of any evaluation under this section, the evaluation must be expunged from the board's records.

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

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

SECTION 9. Sections 301.453(a) and (b), Occupations Code, are amended to read as follows:

(a) If the board determines that a person has committed an act listed in Section 301.452(b), the board shall enter an order imposing one or more of the following:

- (1) denial of the person's application for a license, license renewal, or temporary permit;
- (2) issuance of a written warning;
- (3) administration of a public reprimand;
- (4) limitation or restriction of the person's license, including:
  - (A) limiting to or excluding from the person's practice one or more specified activities of nursing; or
  - (B) stipulating periodic board review;
- (5) suspension of the person's license [~~for a period not to exceed five years~~];
- (6) revocation of the person's license; or
- (7) assessment of a fine.

(b) In addition to or instead of an action under Subsection (a), the board, by order, may require the person to:

- (1) submit to care, counseling, or treatment by a health provider designated by the board as a condition for the issuance or renewal of a license;

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- (2) participate in a program of education or counseling prescribed by the board, including a program of remedial education;
- (3) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the board; or
- (4) perform public service the board considers appropriate.

SECTION 10. Section 301.4535, Occupations Code, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

(a-1) An applicant or nurse who is refused an initial license or renewal of a license or whose license is suspended under Subsection (a) 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.

(b) On final conviction or a plea of guilty or nolo contendere for an offense listed in Subsection (a), the board, as appropriate, may not issue a license to an applicant, shall refuse to renew a license, or shall 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~~].

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SECTION 11. Subchapter J, Chapter 301, Occupations Code, is amended by adding Section 301.4551 to read as follows:

Sec. 301.4551. TEMPORARY LICENSE SUSPENSION FOR DRUG OR ALCOHOL USE. The board shall temporarily suspend the license of a nurse as provided by Section 301.455 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:

- (1) tests positive for alcohol or a prohibited drug;
- (2) refuses to comply with a board order to submit to a drug or alcohol test; or
- (3) fails to participate in the peer assistance program and the program issues a letter of dismissal and referral to the board for noncompliance.

SECTION 12. Section 301.468, Occupations Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) The board may determine that an order denying a license application or suspending a license be probated. A person subject to a probation order shall conform to each condition the board sets as the terms of probation, including a condition:

- (1) limiting the practice of the person to, or excluding, one or more specified activities of professional nursing or vocational nursing; [∅]

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SECTION 13. Same as House version.

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(2) requiring the person to submit to supervision, care, counseling, or treatment by a practitioner designated by the board; or

(3) requiring the person to submit to random drug or alcohol tests in the manner prescribed by the board.

(e) 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 the board should:

(1) continue, rescind, or modify the terms of probation, including imposing an administrative penalty; or

(2) enter an order denying, suspending, or revoking the person's license.

(f) 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:

(1) a positive drug or alcohol test result;

(2) refusal to submit to a drug or alcohol test as required by the board; or

(3) a letter of noncompliance from the peer assistance program.

**No equivalent provision.**

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SECTION 15. Section 63.202(f), Education Code, is amended to read as follows:

(f) Notwithstanding the limitation provided by Subsection (b), grants awarded under Subsection (c) for the state fiscal biennium ending on August 31, 2009, and



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the fiscal biennium ending on August 31, 2011, by the Texas Higher Education Coordinating Board shall 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), Health and Safety Code. In awarding grants under this subsection, the coordinating board may:

- (1) give priority to institutions proposing to address the shortage of registered nurses by promoting innovation in education, recruitment, and retention of nursing students and qualified faculty;
- (2) award grants on a competitive basis; ~~and~~
- (3) consider the availability of matching funds; and
- (4) fund 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.

No equivalent provision.

SECTION 16. Chapter 105, Health and Safety Code, is amended by adding Section 105.008 to read as follows:  
Sec. 105.008. STUDY OF ALTERNATE WAYS TO ASSURE CLINICAL COMPETENCY OF

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GRADUATES OF NURSING EDUCATIONAL PROGRAMS. (a) In this section:

(1) "Clinical competency assessment program" means a professional nursing prelicensure program that employs a criterion-referenced summative performance examination, developed by subject matter experts, to verify its graduates' attainment of the clinical competency necessary for initial licensure as a registered nurse.

(2) "Professional nursing prelicensure program" means a professional nursing educational program that prepares students to obtain an initial license as a registered nurse.

(3) "Research study" means the study described by Subsection (b).

(4) "Supervised clinical learning experiences program" means a professional nursing prelicensure program that requires students to complete a required number of supervised clinical learning experiences provided by qualified clinical faculty involving multiple, ongoing assessments and feedback.

(b) To the extent funding is available, the nursing resource section established under Section 105.002(b) shall 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

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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:

(A) length and type of health care work experience before entering the professional nursing prelicensure programs;

(B) health care work experience during the professional nursing prelicensure programs; and

(C) alternative methods of teaching clinical judgment and behaviors, including supervised clinicals and simulation laboratories; 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) In addition to any other objective, the research study must 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. For purposes of this subsection, the clinical competency assessment program must be one that:

(1) has been requiring a clinical competency assessment

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for at least 10 years;

(2) has students who reside in this state;

(3) has graduates who have been considered by the Texas Board of Nursing 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

(4) 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) Considerations to be used in determining substantial equivalence under Subsection (c) must include the differences between the clinical competency assessment program and the supervised clinical learning experiences program in:

(1) the methods of evaluating students' clinical judgment and behaviors;

(2) performance on standardized clinical exit evaluation tools;

(3) the ability of graduates to transition to and assimilate in the registered nurse's role; and

(4) passage rates on the National Council Licensure Examination.

(e) The nursing resource section shall contract with an independent researcher to develop the research design and conduct the research. The independent researcher must be selected by a selection committee composed of:

(1) one representative elected by a majority of the

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nursing advisory committee under Section 104.0155, who is the chair of the selection committee;  
(2) one representative designated by the Texas Health Care Policy Council;  
(3) the presiding officer of the Texas Board of Nursing;  
(4) one representative of the Texas Higher Education Coordinating Board, designated by the governor;  
(5) one representative designated by the Texas Hospital Association;  
(6) one representative designated by the Texas Association of Business;  
(7) one representative designated by a clinical competency assessment program that meets the requirements of Section 301.157(d-8), Occupations Code; and  
(8) the nurse researcher member of the nursing advisory committee under Section 104.0155.  
(f) The nursing resource section shall complete the study not later than June 30, 2014, and shall submit a report to the office of the governor, the Senate Committee on Health and Human Services, and the House Committee on Public Health. The report must include a research abstract prepared by the independent researcher.  
(g) The nursing resource section may cooperate with the Texas Board of Nursing and the Texas Higher Education Coordinating Board in conducting the study.  
(h) The nursing advisory committee formed under Section 104.0155 shall serve as the oversight committee for the study.

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(i) 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 may not be released unless all identifying information is removed.

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

(k) If grants or other funds are available through the National Council of State Boards of Nursing that could be used to fund the study, the nursing resource section shall apply for the funds to the maximum amount available up to the estimated cost of the study. In making the application or accepting the funding, the nursing resource section may not relinquish any oversight responsibility for the study, including responsibility for designing and conducting the research or developing the findings.

SECTION 13. Section 301.202(b), Occupations Code, is repealed.

SECTION 17. Same as House version.

SECTION 14. (a) The change in law made by Section 301.4521, Occupations Code, as added by this Act, applies only to an application filed with the Texas Board

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of Nursing on or after the effective date of this Act. An application filed before the effective date of this Act is covered by the law in effect when the application was filed, and the former law is continued in effect for that purpose.

(b) The changes in law made by Section 301.4551, Occupations Code, as added by this Act, and Section 301.468, Occupations Code, as amended by this Act, apply only to a violation of an order issued by the Texas Board of Nursing on or after the effective date of this Act. A violation of an order issued by the Texas Board of Nursing before the effective date of this Act is covered by the law in effect when the order was issued, and the former law is continued in effect for that purpose.

SECTION 15. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

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SECTION 19. Same as House version.

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