

BILL ANALYSIS

C.S.H.B. 2726
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas, along with the rest of the country, is experiencing a nursing workforce shortage that has been exacerbated by the recent pandemic. To ensure patient safety, the law must be changed to guarantee equal application of the Nursing Practice Act to Texas-based nurses and out-of-state nurses practicing in the state under the authority of a waiver or emergency declaration issued by the governor. Additionally, reforms to the Texas Board of Nursing's disciplinary processes are needed to ensure fairness and equal application of the law in addressing violations in the practice of nursing, while also promoting full employment of licensed nurses in Texas. C.S.H.B. 2726 seeks to address these issues by subjecting a person who practices nursing in Texas under the authority of a waiver or emergency declaration issued by the governor to state law and oversight with respect to prohibited practices and disciplinary action, grants to the board the authority to establish an expungement process for low-level violations of the Nursing Practice Act that do not involve direct patient harm, and provides for the confidentiality of certain disciplinary-related information with respect to participants in a board-approved pilot program.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Nursing in SECTION 4 of this bill.

ANALYSIS

C.S.H.B. 2726 amends the Occupations Code to subject a person who practices nursing in Texas on or after the bill's effective date under the authority of a waiver or emergency declaration issued by the governor to the jurisdiction of the Texas Board of Nursing and to Nursing Practice Act provisions regarding prohibited practices and disciplinary actions.

C.S.H.B. 2726 requires the board by rule to adopt procedures to expunge records related to the discipline of a nurse under the act and voids a disciplinary order expunged under the bill's provisions. The bill makes eligible for such an expunction of records a nurse who meets the following criteria:

- the nurse successfully completes the requirements of any disciplinary order the board imposed on the nurse and of any board-approved agreed settlement or alternative dispute resolution; and
- the nurse has not committed an additional or repeated violation of the act or board rule in the five years preceding the date of the filing of a request for an expunction of a record.

The bill requires the board, in determining a nurse's eligibility for records expunction, to consider the seriousness of previous violations of the act or board rule, as demonstrated by the sanctions imposed on the nurse.

C.S.H.B. 2726 prohibits the board from expunging a record related to a violation that directly harmed a patient. The bill establishes that a disciplinary order and any related investigatory document expunged from a nurse's record, including any previously filed formal charge, is not public information for purposes of state public information law and is not subject to disclosure, unless an appropriate court order or subpoena provides otherwise.

C.S.H.B. 2726 requires the board to report to the National Practitioner Data Bank the expunction of a nurse's disciplinary record and authorizes the board to establish an expunction fee in an amount reasonable and necessary to cover the costs of administering the bill's expunction provisions. The bill authorizes a nurse whose disciplinary record has been expunged to state in response to an inquiry that the expunged disciplinary record does not exist.

C.S.H.B. 2726 subjects a complaint, the filing and nature of formal charges, a final board order, and disciplinary proceedings, of which a nurse ordered to participate in a board-approved pilot program for innovative applications is the subject, to confidentiality and disclosure requirements in the same manner as those requirements apply to a nurse ordered to participate in a board-approved peer assistance program.

C.S.H.B. 2726 requires the board to adopt the rules necessary to implement the bill's provisions not later than December 1, 2023.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2726 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the substitute and introduced make eligible for expunction of records a nurse who successfully completes the requirements of any disciplinary order imposed on the nurse by the board and of any board-approved agreed settlement or alternative dispute resolution. However, the substitute includes an eligibility requirement not in the introduced further conditioning eligibility for expunction on the nurse having not committed an additional or repeated violation of the Nursing Practice Act or board rule in the five years preceding the date of the filing of a request for expunction.

Whereas the introduced authorized the board, in determining a nurse's eligibility for the expunction of records, to consider the seriousness of previous violations as demonstrated by the sanctions imposed on the nurse, the substitute requires the board to consider such information. The substitute omits a provision from the introduced that additionally authorized the board, in making that determination, to consider whether the nurse has committed additional or repeated violations during a period established by the board.

The substitute includes a provision absent from the introduced that prohibits the board from expunging a record related to a violation that directly harmed a patient.

Both the introduced and substitute establish that a disciplinary order and any related investigatory document expunged from a nurse's record, including any previously filed formal charge, is not public information for purposes of state public information law and is not subject

to disclosure. However, the introduced established that such a disciplinary order or investigatory document is also not subject to discovery, subpoena, or other means of legal compulsion for release, which is not included in the substitute. Instead, the substitute establishes that such an order or investigatory document may be subject to disclosure pursuant to an appropriate court order or subpoena that provides otherwise, which was not in the introduced.