

## **BILL ANALYSIS**

C.S.H.B. 4176  
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Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

On January 25, 2023, the U.S. Department of Health and Human Services Office of Inspector General (HHS-OIG) and law enforcement partners launched a multi-state coordinated law enforcement action to apprehend individuals engaged in a scheme to sell false and fraudulent nursing degree diplomas and transcripts. Operation Nightingale has revealed the need for an immediate process to address fraudulent credentials. As of March 22, 2023, the Texas Board of Nursing has filed charges against 115 nurses. While due process must occur, the state cannot allow individuals to continue providing care to patients once evidence of illegitimate credentials is uncovered. C.S.H.B. 4176 seeks to authorize the Texas Board of Nursing to immediately suspend a license if the board discovers that an individual's license, diploma, license renewal, or other record was fraudulently issued or obtained and to set out provisions for a hearing to determine if the individual was fraudulently issued a license, diploma, license renewal, or other record.

### **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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 4176 amends the Occupations Code to authorize the Texas Board of Nursing to issue an order suspending a nursing license without notice on showing of probable cause that the license holder has engaged in the following prohibited practices:

- selling, fraudulently obtaining, or fraudulently furnishing a nursing diploma, license, renewal license, or record or assisting another person in doing so; or
- practicing nursing under a diploma, license, or record that was obtained unlawfully or fraudulently or was signed or issued unlawfully or under false representation.

C.S.H.B. 4176 establishes that a showing of probable cause that an individual has violated such practices constitutes a continuing and imminent threat to the public welfare. The bill requires the board, on the issuance of a summary suspension order on such grounds, to serve notice of the suspension, including the basis for the suspension, personally or by certified mail, on the individual whose license is suspended at the individual's last known address on file with the board. Service is complete when the board personally serves the individual or sends the notice.

C.S.H.B. 4176 authorizes an individual whose license is suspended to request a hearing to be held by the State Office of Administrative Hearings (SOAH). The bill, with respect to the hearing, does the following:

- requires the hearing to be held not later than the 90th day after the date the order suspending the license was issued;
- establishes that, if a hearing is not requested on or before the 20th business day after the date the suspension order was issued, the right to a hearing is waived and the license must remain suspended;
- requires SOAH to consider whether evidence exists to support a finding that the individual violated the applicable prohibitions;
- requires the individual to have the opportunity to rebut the evidence that provided the basis for the summary suspension;
- establishes that the individual has the burden of proving by a preponderance of the evidence that the license was lawfully obtained if the individual submitted, as part of the individual's application, a transcript, diploma, or other document required for licensure that was issued or purportedly issued by an entity that has been implicated in a scheme of fraud relating to the issuance of those documents;
- requires SOAH to issue an order revoking the individual's license if SOAH makes a finding in the hearing that an individual violated the applicable prohibitions; and
- requires the Texas Board of Nursing to immediately issue an order reinstating the individual's license if SOAH makes a finding at the hearing that the individual did not violate the applicable prohibitions.

C.S.H.B. 4176 prohibits an individual whose license is revoked from applying for a nursing license in Texas until the first anniversary of the date of issuance of the revocation order and the applicant provides evidence of completion of a nursing education program meeting applicable statutory requirements and board rules.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 4176 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.

Whereas the introduced authorized the Texas Board of Nursing to annul a nursing license without notice or hearing on receipt of credible evidence that the holder of the license violated certain prohibitions, the substitute authorizes the board to issue an order suspending the license without notice on a showing of probable cause that the holder of the license violated the prohibitions. The substitute includes a provision absent from the introduced establishing that such a showing of probable cause constitutes a continuing and imminent threat to the public welfare. Whereas the introduced required the board to serve notice of the annulment immediately on issuance of the order annulling the license, the substitute requires the board to serve notice of the suspension, including the basis for the suspension, on the issuance of a summary suspension order. Whereas the introduced established that service is complete and the annulment is effective when the board personally serves or sends the notice, the substitute establishes that only service is complete when the board serves or sends the notice.

Whereas the introduced authorized an individual whose license is annulled to request a hearing for the reinstatement of the license not later than the 30th day after the date the order annulling the license is issued, the substitute authorizes an individual whose license is suspended to request a hearing to be held by SOAH. The substitute omits a provision from the introduced that required SOAH to determine in the hearing whether the annulment of the license is justified. The

substitute includes a provision absent from the introduced establishing that, if a hearing is not requested on or before the 20th business day after the date the suspension order was issued, the right to a hearing is waived and the license must remain suspended.

The substitute includes a provision absent from the introduced requiring the individual to have the opportunity to rebut the evidence that provided the basis for the summary suspension. The substitute includes the following provisions absent from the introduced:

- a requirement for the board to issue an order revoking the individual's license if SOAH makes a finding in the hearing that an individual violated the applicable prohibitions; and
- a requirement for the board to immediately reinstate the individual's license if SOAH makes a finding in the hearing that the individual did not violate the applicable prohibitions.

The substitute omits the provisions from the introduced establishing that prohibition against an individual whose license is annulled applying for a license until a certain date and the individual takes certain actions applies only to a proceeding commenced on or after the bill's effective date and a proceeding commenced before that date is governed by the law in effect on the date the proceeding commenced.