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*Bill Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 511**

123rd General Assembly  
(As Passed by the House)

**Reps. Schuring, Van Vyven, Vesper, Grendell, Aslanides, Mottley, Tiberi, Goodman, Ogg, Hollister, Terwilleger, Widener, Stevens, Patton, Sykes, Krupinski, Myers, Olman, Austria, Britton, Barrett, Bender, Salerno**

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### **BILL SUMMARY**

- Specifies that a nursing student must practice under the auspices of a prelicensure nursing education program and under the direct supervision of a registered nurse serving for the program as a faculty member, teaching assistant, or preceptor.
- Expands the activities permitted in Ohio by individuals licensed to practice nursing in another jurisdiction.
- Adds chiropractors to the health care professionals who may direct the practice of nursing by licensed practical nurses.
- Requires an employer to report to the Board of Nursing any nurse the employer believes has violated any statute or rule governing the practice of nursing.
- Eliminates the provision that authorized the Board to discipline a nurse for failing to return to the Board a license or certificate that has lapsed or been suspended or revoked.
- Modifies certain aspects of investigating and disciplining a nurse, including procedures for conducting a license suspension without a hearing, access to criminal background information, and jurisdiction over nurses with inactive licenses.
- Specifies that any disciplinary action taken by the Board may be permanent.

- Subjects a nurse to discipline by the Board for failing to establish and maintain professional boundaries with a patient.
- Permits the Board to enter into a consent agreement with a license holder to resolve an alleged violation of the nursing law.
- Provides that the Board is not required to act on a minor violation of the nursing law if certain circumstances exist.
- Permits employees of the Board to have access to certain drug records.
- Modifies the Alternative Program for Chemically Dependent Nurses by specifying that the program is a monitoring program, making the program available to additional persons, and eliminating the Board's duty to approve treatment providers.
- Changes the five-year term of office for Board members to four years.
- Requires the Board to elect one of its registered nurse members to serve as the supervising member for disciplinary matters.
- Requires the Board to provide guidance and make recommendations to certain governmental entities regarding the regulation of the practice of nursing and the enforcement of the nursing laws.
- Modifies the procedure the Board must follow when issuing a license to practice nursing and renewing a license to practice nursing or certificate to practice in a specialized area of nursing.
- Modifies the fees for renewal of a certificate to practice in a specialized area of nursing and establishes a fee for reinstatement of a lapsed license or certificate.
- Modifies the schedule for authorization to approve continuing nursing education (CNE) programs and courses, adds a required CNE topic to the program, and permits the Board to use random sampling to ensure completion of CNE.
- Eliminates specific references to agreements between the Board and the Department of Health regarding nurse aide training.

- Increases the penalty for engaging in certain acts that are prohibited in the law governing nurses.

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## CONTENT AND OPERATION

### Exceptions to the law governing nurses

#### Nursing students

(sec. 4723.32(A))

Currently, the law governing nurses, including the prohibition against the unlicensed practice of nursing, does not prohibit the practice of nursing by students as an integral part of a program of study leading to initial licensure and approved by the Board. The bill specifies that the nursing student exception applies only if the student's practice is under the auspices of a prelicensure nursing education program approved by the Board and the student acts under the direct supervision of a registered nurse (RN) serving for the program as a faculty member, teaching assistant, or preceptor.

#### Nurses licensed in other jurisdictions

(sec. 4723.32(G))

Currently, the law governing nurses does not prohibit the activities of a nurse licensed in another jurisdiction if one of the following is the case:

- (1) The nurse is engaging in the practice of nursing by discharging official duties while employed by the U.S. government or any agency thereof;
- (2) The nurse is an employee of an individual, agency, or corporation located in the other jurisdiction in a position with employment responsibilities that include transporting patients into, out of, or through Ohio, as long as each trip in Ohio does not exceed 48 hours.

With respect to the exception for nurses practicing for the federal government, the bill extends the exception to a person who is under contract with the government, but not necessarily an employee. With respect to the exception for nurses transporting patients, the bill increases the maximum period from 48 hours to 72 hours.

The bill creates additional exceptions to the law governing nurses for nurses licensed in other jurisdictions. These exceptions apply to a nurse who engages in any of the following activities:

- (1) Consulting with an individual licensed in Ohio to practice any health-related profession;

(2) Engaging in activities associated with teaching in Ohio as a guest lecturer at or for a nursing education program, continuing nursing education program, or in-service presentation;

(3) Conducting evaluations of nursing care that are undertaken on behalf of any nationally recognized accrediting organization;

(4) Providing nursing care to an individual who is in Ohio on a temporary basis, not to exceed six months in any calendar year, if the nurse is directly employed by or under contract with the individual or a guardian or other person acting on behalf of the individual;

(5) Providing nursing care during any disaster, natural or otherwise, that has been officially declared to be a disaster by a public announcement issued by an appropriate federal, state, county, or municipal official.

In addition, the bill specifies that for the activities of an individual licensed in another jurisdiction to be permitted, the individual's license in the other jurisdiction must not have been revoked, the individual must not be currently under suspension or on probation, and the individual must not represent that the individual is licensed in Ohio.

**Practice of nursing by licensed practical nurses**

(sec. 4723.01)

Under current law, the practice of nursing as a licensed practical nurse (LPN) includes providing to individuals and groups nursing care that requires the application of basic knowledge of the biological, physical, behavioral, social, and nursing sciences at the direction of a licensed physician, dentist, podiatrist, optometrist, or RN. The bill adds chiropractors to the individuals who may direct the practice of an LPN.

**Reports by employers of nurses who violate the law**

(sec. 4723.34)

Under current law, every employer of RNs or LPNs must report to the Board the name of any nurse whose employment has been voluntarily or involuntarily terminated due to conduct that would be grounds for disciplinary action by the Board. Under the bill, a report is required with respect to any former employee, regardless of how the nurse's employment ceased. Further, the bill requires a report to be made while a nurse is currently employed.

## **Sanctioning power of the Board**

### **Actions taken by the Board may be permanent**

(sec. 4723.28(K))

Current law permits the Board to deny, permanently revoke, suspend, or place restrictions on any license or certificate issued by the Board. Under the bill, when the Board refuses to grant a license or certificate, revokes a license or certificate, or refuses to reinstate a license or certificate, the Board may specify that its action is permanent. An individual subject to permanent action taken by the Board is forever ineligible to hold a license or certificate of the type that was refused or revoked and the Board must not accept from the individual an application for reinstatement of the license or certificate or for a new license or certificate.

### **Cases of a plea of no contest or a finding of eligibility for intervention in lieu of conviction**

(sec. 4723.28(B); Section 4)

Under current law, the reasons for which the Board may impose a sanction include the conviction of, plea of guilty to, or a judicial finding of guilt for various crimes. Regarding these crimes, the bill authorizes the Board to also impose a sanction if there is a judicial finding of guilt resulting from a plea of no contest or a judicial finding of eligibility for intervention in lieu of a conviction. The bill specifies that this provision extends to a person who was found eligible for "treatment" in lieu of conviction, which is now included in cases of intervention in lieu of conviction.

### **Failure to establish and maintain professional boundaries**

(secs. 4723.07(Q) and 4723.28(B))

The bill permits the Board to sanction a license or certificate holder for failure to establish and maintain professional boundaries with a patient. The bill requires the Board to adopt rules that establish the actions, omissions, or other circumstances that constitute a nurse's failure to establish and maintain professional boundaries with a patient. The rules must be adopted in accordance with the provisions of the Administrative Procedure Act (R.C. Chapter 119.) that require a public hearing.

### **Failure to return license**

(sec. 4723.28(B))

The bill eliminates a provision authorizing the Board to discipline a nurse for failing to return a license or certificate that has lapsed or been suspended or revoked.

**Inactive and expired licenses**

(sec. 4723.28(L))

The bill specifies that the Board maintains jurisdiction to take disciplinary action even when an individual has a license or certificate of authority classified as inactive or fails to renew a license or certificate.

**Extending discipline to different nursing licenses**

(sec. 4723.28(B)(1)(b) and (N))

The bill authorizes the Board to take disciplinary action against a nurse if the nurse is dually licensed in Ohio to practice as an RN and as an LPN and the Board imposes a sanction against one of the person's licenses. In addition, the bill authorizes the Board to refuse to issue a new license or impose a sanction against an individual licensed as an RN or LPN who applies for the other license to practice nursing after having been subject to a previous sanction by the Board. For example, if an RN is also licensed as an LPN, and the Board imposes a sanction against the person's license as an RN, the bill permits the Board to impose a sanction for the same reason against the person's LPN license. As another example, if an LPN is disciplined under that license and later tries to receive a license as an RN, the bill permits the Board to use the same reason that the person was sanctioned as an LPN as a reason for refusing to issue a license to the person to practice as an RN.

**Consent agreement to resolve an alleged violation of the law**

(sec. 4723.28(C))

The bill permits the Board to enter into a consent agreement with an individual to resolve an allegation of a violation of a statute or rule governing the practice of nursing. A consent agreement, when ratified by a vote of a quorum, constitutes the findings and order of the Board with respect to the matter addressed in the agreement. If the Board refuses to ratify a consent agreement, the admissions and findings contained in the agreement are of no effect.

### **Minor violations**

(sec. 4723.061)

The bill provides that the Board is not required to act on minor violations of the nursing law or rules adopted under it, if the violations are committed by individuals licensed under the nursing law and the Board determines that the public is adequately protected by issuing a notice or warning to the alleged offender.

### **Criminal background investigations**

(sec. 4723.28(F))

The bill permits the Board to investigate an individual's criminal background by requesting information from the Bureau of Criminal Identification and Investigation. The Board may also apply for access to the computerized databases administered by the National Crime Information Center and the Law Enforcement Automated Data System, as well as other computerized databases administered for the purpose of making criminal justice information accessible to state agencies. The bill designates the Board as a criminal justice agency for the purposes of any state or federal law requiring, as a condition of being authorized to apply for access to these databases, that an entity be recognized under state law as a criminal justice agency.

### **Board records unaffected by sealing of court records**

(sec. 4723.28(E))

Under current law, if the court seals a record of conviction on which the Board has based a disciplinary action, the sealing of the record has no effect on the Board's action or any sanction imposed by the Board. The bill specifies that the Board is not required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing of conviction records.

### **Summary suspensions**

(sec. 4723.281)

Under current law, the Board may impose a suspension without a hearing on a person licensed to practice nursing if it determines there is evidence that the license holder is subject to disciplinary action and there is clear and convincing evidence that the person's continued practice presents a danger of immediate and serious harm to the public. The Board president and director are to make the preliminary determinations and present the evidence to the Board. The Board may then, by an affirmative vote of seven of its members not including the president, impose a suspension without a hearing.

The bill eliminates the requirement that the Board vote on imposing a summary suspension. Instead, the bill provides for the Board president and executive director to impose the summary suspension, with a written order from the Board to follow. With respect to the standards for determining when to impose a summary suspension, the bill retains the standard of finding clear and convincing evidence that continued practice presents a danger of immediate and serious harm to the public. The requirement that the nurse be found to be subject to disciplinary action by the Board, however, is eliminated by the bill. For purposes of the imposing summary suspensions, the bill specifies that an individual serving as president or executive director, in the absence of the president or executive director, is permitted to take any action that the president or executive director may take.

**Failure to request a hearing**

(sec. 4723.28(D))

The bill provides that in situations in which it would otherwise be required to hold a hearing, the Board is not required to hold the hearing if the applicant or license holder does not make a timely request for a hearing. If a hearing is not held, the Board may adopt, by vote of a quorum, a final order that contains the Board's findings. In the final order, the Board may order any of the sanctions authorized by the nursing law.

**Access to certain drug records**

(sec. 3719.13)

Under current law, prescriptions, orders, and other drug records required by the law governing dangerous drugs and controlled substances are open for inspection to federal, state, county, and municipal officers, and employees of the State Board of Pharmacy whose duty it is to enforce the laws of this state or of the United States relating to controlled substances. The prescriptions, orders, records, and stocks are also open for inspection by employees of the State Medical Board for enforcement of the laws governing physicians. The bill expands access to these materials by requiring that they be open for inspection to employees of the Board of Nursing for purposes of enforcing the laws governing the practice of nursing.

**Monitoring of chemically dependent nurses**

(secs. 4723.06 and 4723.35)

Current law requires that the Board of Nursing establish the Alternative Program for Chemically Dependent Nurses, a program for nurses who abuse alcohol, controlled substances, harmful intoxicants, or other dangerous drugs.

Under rules adopted by the Board, the program has been implemented as a monitoring program. The bill makes changes to reflect the monitoring nature of the program. Rather than having the program's name specified in statute, the bill requires the Board to select the name. The bill changes the title of the program's administrator to coordinator.

As under current law, the monitoring program must be made available to RNs and LPNs. The bill extends the program to other individuals under the Board's jurisdiction, including, for example, applicants for licensure and nurses who have lost their licenses to practice.

The bill eliminates provisions of current law that limit the Board's authority to conduct investigations and impose sanctions against persons who participate in the monitoring program, particularly with respect to voluntary participants. The bill's conditions on the Board's authority to abstain from taking disciplinary action against a program participant are as follows: (1) the individual must meet the eligibility requirements for admission into the program, (2) the individual must enter into a monitoring agreement with the program coordinator, (3) the individual must comply with the terms and conditions for continued participation in the program, as specified in the monitoring agreement, and (4) the individual must successfully complete the terms and conditions of the agreement.

Under current law, records of participants in the program are not public records and are confidential, except to the extent that the Board is given reports on individuals who fail to complete the program. The bill continues to provide for the confidentiality of the records, but allows the program's coordinator to disclose to the Board more than failure to complete the program. Under the bill, the coordinator may disclose records or information regarding an individual's progress and state of participation in the program to the Board's disciplinary section and to any person or government entity that the participant authorizes in writing to be given the records or information. In making these disclosures, the coordinator is prohibited from including any record of information that is protected under state or federal law providing for the confidentiality of mental health or substance abuse records. If the information or records are disclosed properly, the bill provides that the program coordinator, the Board, and the Board's employees and representatives are immune from civil liability as a result of making the disclosure.

#### **Approval of treatment providers**

(secs. 4723.341 and 4723.342 (repealed))

The bill eliminates the provisions of current law requiring that the Board approve and designate treatment providers for "impaired" nurses.

## **Modifications relative to the Board of Nursing**

### **Term of office**

(sec. 4723.02; Section 3)

Under current law, Board of Nursing members are appointed for a term of five years. The bill reduces the term of office to four years. The change does not affect the terms of the Board members holding office on the bill's effective date.

Current law allows a person to serve one full term as a member of the Board. The bill permits a member to serve two full terms. A partial term of 30 months continues to be considered a full term.

### **Election of an RN to oversee disciplinary matters**

(sec. 4723.02)

Current law requires that eight of the 13 members of the Board of Nursing be registered nurses. The bill requires the Board to elect one of its registered nurse members to serve as the supervising member for disciplinary matters.

### **Additional duty of the Board**

(sec. 4723.06)

The bill adds to the duties of the Board the duty to provide guidance and make recommendations to the General Assembly, the Governor, state agencies, and the federal government with respect to the regulation of the practice of nursing and the enforcement of the nursing laws.

### **File on applicants**

(sec. 4723.06)

Under current law, the Board is required to maintain and have open for public inspection a file of applicants for and holders of licenses, registrations, and certificates granted by the Board. The bill eliminates the requirement that the Board maintain a file with respect to applicants.

## **Changes in procedure for licensing and license renewal**

### **Licensing examination**

(secs. 4723.06, 4723.07, 4723.09, and 4723.10)

Current law requires that the Board examine applicants for licensure to practice as an RN or LPN and permits the Board to use, in administering examinations for licensure, all or any part of the licensure examination of the National Council of State Boards of Nursing or any other national standardized nursing examination that determines whether a person is competent to commence practicing nursing as an RN or LPN. The bill eliminates the requirement that the Board administer the licensing examinations; instead it requires that the Board accept all or any part of a national standardized licensing examination. The bill provides that if the Board incurs any cost in its acceptance of an examination or in making the accepted examination available to applicants, the Board may require applicants to pay an amount sufficient to cover the cost incurred.

### **Board to provide application for renewal**

(secs. 4723.24 and 4723.42(B))

Current law requires the Board to mail an application for renewal of a license to practice nursing to every active license holder and a renewal application for authorization to practice as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner to certificate holders. The bill modifies this procedure and requires that the Board "provide" a renewal application to every holder of an active license and certificate holders, except when the Board is aware that an individual is ineligible for license or certificate renewal for any reason, including the following: (1) pending criminal charges in Ohio or another jurisdiction, (2) failure to comply with a disciplinary order from the Board or the terms of a consent agreement entered into with the Board, (3) failure to pay fines or fees owed to the Board, or (4) failure to provide on the Board's request documentation of having completed continuing nursing education requirements.

### **Fees**

(sec. 4723.08)

The bill reduces, to \$85 from \$100, the fee for biennial renewal of a certificate of authority to practice nursing as a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner. The reduction applies to certificates that expire on or after September 1, 2005.

The bill creates a new fee of \$100 for reinstatement of a lapsed license or certificate.

**Status of specialized nursing certificate when license is inactive**

(sec. 4723.47)

Under current law, if a certified registered nurse anesthetist's, clinical nurse specialist's, certified nurse-midwife's, or certified nurse practitioner's license to practice nursing expires for failure to renew, the nurse's certificate of authority to practice nursing in one of specialized areas of nursing is automatically suspended until the license is reinstated. If the license is revoked or suspended due to sanctioning by the Board, the certificate of authority is automatically revoked or suspended. The bill adds that if the license is classified as inactive, the certificate of authority is automatically classified as inactive while the license remains inactive.

**Continuing nursing education**

(secs. 4723.06, 4723.07, and 4723.24(C))

Current law requires, for license renewal, that holders of active licenses to practice nursing complete in each two-year period 24 hours of continuing nursing education. The bill adds the requirement that at least one hour be directly related to the statutes and rules pertaining to the practice of nursing in Ohio.

The bill authorizes the Board to conduct a random sample of license holders to determine completion of required continuing nursing education.

Under current law, the Board authorizes, for a period of two years with the possibility of renewal, persons to approve continuing nursing education programs and courses. Instead of authorization for the specified two-year period, the bill permits the Board to establish by rule a schedule for authorization and renewal of authorization for those persons.

**Training of nurse aides used by nursing homes**

(secs. 3721.34, 4723.061, and 4723.082)

Current law requires that the nurse aides used in nursing homes be trained and evaluated for competency to perform nursing and nursing-related services. In implementing this requirement, the Director of Health is authorized to enter into agreements with the Board of Nursing or another state agency to conduct the process of approving programs for training and competency evaluation. In turn, the Board is authorized to enter into the agreements with the Director.

The bill eliminates the Board's express authority to enter into the agreements with the Director. In so doing, it eliminates the Nurse Aide Fund created in the state treasury for the Board's use in carrying out the agreements. Although the bill also eliminates the Director's express authority to advise, consult or cooperate with, or enter into agreements with the Board, it retains the Director's general authority to enter into agreements and otherwise work with any state agency.

**Criminal penalties for violations of the nursing law**

(sec. 4723.99)

Under current law, a person who engages in certain acts prohibited in the nursing law may be fined \$500, imprisoned up to 90 days, or both.<sup>1</sup> The bill increases the penalty, with one exception, to a fifth degree felony on a first offense and a fourth degree felony on a second offense.<sup>2</sup> The exception applies to an RN or LPN who engages in the unauthorized practice of nursing by reason of a license that has lapsed for failure to renew or is classified as inactive. In this case, the person is guilty of a minor misdemeanor.<sup>3</sup>

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**HISTORY**

| ACTION                                     | DATE     | JOURNAL ENTRY |
|--|----------|---------------|
| Introduced                                 | 11-29-99 | p. 1375       |
| Reported, H. Health,<br>Retirement & Aging | 04-12-00 | p. 1821       |
| Passed House (96-0)                        | 05-16-00 | pp. 1953-1954 |

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<sup>1</sup> *Those acts include (1) the unauthorized practice of nursing as an RN or LPN, (2) the unauthorized practice of a nursing specialty, (3) the use of certain titles to represent that the person is authorized to practice nursing in Ohio (with some exceptions for nurses licensed in Ohio), (4) with respect to nurses practicing in a nursing specialty, practicing outside the nurse's specialty, and (5) employing persons other than nurses to practice nursing (R.C. 4723.03 and 4723.44, not in the bill).*

<sup>2</sup> *A fifth degree felony may result in a prison term ranging from six to 12 months, a fine of up to \$2,500, or both. A fourth degree felony may result in a prison term ranging from six to 18 months, a fine of up to \$5,000, or both (R.C. 2929.14 and 2929.18, not in the bill).*

<sup>3</sup> *A minor misdemeanor may result in a fine alone of up to \$100 (R.C. 2929.21, not in the bill).*

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