

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

D

HOUSE BILL 195
PROPOSED COMMITTEE SUBSTITUTE H195-PCS30188-SHf-2

Short Title: Board of Nursing Technical Changes.-AB

(Public)

Sponsors:

Referred to:

February 27, 2019

1 A BILL TO BE ENTITLED
2 AN ACT IMPLEMENTING NORTH CAROLINA BOARD OF NURSING TECHNICAL
3 CHANGES, PROCEDURAL EFFICIENCIES, AND FEE CEILING INCREASES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 90-171.20 reads as rewritten:

6 "**§ 90-171.20. Definitions.**

7 As used in this Article, unless the context requires otherwise:

8 ...

9 (3) "License" means a permit issued by the Board to practice nursing as a
10 registered nurse or as a licensed practical nurse, including a renewal thereof.

11 (3a) "Licensee" means any person issued a license by the Board, whether the
12 license is active or inactive, including an inactive license by means of
13 surrender.

14"

15 **SECTION 2.** G.S. 90-171.21 reads as rewritten:

16 "**§ 90-171.21. Board of Nursing; composition; selection; vacancies; qualifications; term of**
17 **office; compensation.**

18 ...

19 (d) Qualifications. – Of the eight registered nurse members on the Board, one shall be a
20 nurse administrator employed by a hospital or a hospital system, who shall be accountable for
21 the administration of nursing services and not directly involved in patient care; one shall be an
22 individual who meets the requirements to practice as a certified registered nurse anesthetist, a
23 certified nurse midwife, a clinical nurse specialist, or a nurse practitioner; two shall be staff
24 nurses, defined as individuals who are primarily involved in direct patient care regardless of
25 practice setting; one shall be an at-large registered nurse who meets the requirements of
26 sub-subdivisions (1) a., a1., and b. of this subsection, but is not currently an educator in a program
27 leading to licensure or any other degree-granting program; and three shall be nurse educators.
28 Minimum ongoing employment requirements for every registered nurse and licensed practical
29 nurse shall include continuous employment equal to or greater than fifty percent (50%) of a
30 full-time position that meets the criteria for the specified Board member position. Of the three
31 nurse educators, one shall be a practical nurse educator, one shall be an associate degree or
32 diploma nurse educator, and one shall be a baccalaureate or higher degree nurse educator. All
33 nurse educators shall meet the minimum education requirement as established by the Board's
34 education program standards for nurse faculty. Candidates eligible for election to the Board as
35 nurse educators are not eligible for election as the at-large member.



* H 1 9 5 - P C S 3 0 1 8 8 - S H F - 2 *

- 1 (1) Except for the at-large member, every registered nurse member shall meet the
- 2 following criteria:
- 3 a. Hold ~~a current, an active,~~ unencumbered license to practice as a
- 4 registered nurse in North Carolina.
- 5 a1. Be a resident of North Carolina.
- 6 b. Have a minimum of five years of experience as a registered nurse.
- 7 c. Have been engaged continuously in a position that meets the criteria
- 8 for the specified Board position for at least three years immediately
- 9 preceding election.
- 10 d. Show evidence that the employer of the registered nurse is aware that
- 11 the nurse intends to serve on the Board.
- 12 (2) Every licensed practical nurse member shall meet the following criteria:
- 13 a. Hold ~~a current, an active,~~ unencumbered license to practice as a
- 14 licensed practical nurse in North Carolina.
- 15 a1. Be a resident of North Carolina.
- 16 c. Have a minimum of five years of experience as a licensed practical
- 17 nurse.
- 18 d. Have been engaged continuously in the position of a licensed practical
- 19 nurse for at least three years immediately preceding election.
- 20 e. Show evidence that the employer of the licensed practical nurse is
- 21 aware that the nurse intends to serve on the Board.
- 22 (3) A public member ~~appointed by the Governor~~ shall not be a ~~provider of health~~
- 23 ~~services or employed in the health services field. No licensed nurse or licensed~~
- 24 ~~health care professional or employed by a health care institution, health care~~
- 25 ~~insurer, or a health care professional school. No public member appointed by~~
- 26 ~~the Governor~~ or person in the public member's immediate family as defined
- 27 by G.S. 90-405(8) shall be currently employed as a licensed nurse or been
- 28 previously employed as a licensed nurse.

29 ...

30 (g) ~~Reimbursement. Compensation.~~ – Board members are entitled to receive

31 compensation and reimbursement ~~as authorized by G.S. 93B-5~~ for all expenses proper and

32 necessary as determined by the Board to discharge its duties and to enforce the laws regulating

33 the practice of nursing. The per diem compensation of Board members shall not exceed two

34 hundred dollars (\$200.00) per member for time spent in the performance and discharge of duties

35 as a member."

36 **SECTION 3.** G.S. 90-171.23 reads as rewritten:

37 "**§ 90-171.23. Duties, powers, and meetings.**

- 38 ...
- 39 (b) Duties, powers. The Board is empowered to:
- 40 ...
- 41 (6) Examine, license, and renew the licenses of duly qualified applicants for
- 42 licensure.
- 43 (6a) Determine whether an applicant or licensee is mentally and physically capable
- 44 of practicing nursing with reasonable skill and safety. The Board may require
- 45 an applicant or licensee to submit to a mental health examination by a licensed
- 46 mental health professional designated by the Board and to a physical
- 47 examination by a physician or other licensed health care professional
- 48 designated by the Board. The Board may order an applicant or licensee to be
- 49 examined before or after charges are presented against the applicant or
- 50 licensee. The results of the mental health examination or physical examination

- 1 shall be reported directly to the Board and shall be admissible into evidence
- 2 in a hearing before the Board.
- 3 (7) ~~Cause the prosecution of all persons violating this Article.~~ Determine and
- 4 administer appropriate disciplinary action against all regulated parties who are
- 5 found to be in violation of this Article or rules adopted by the Board.
- 6 ...
- 7 (10) ~~Grant or deny~~ Grant, deny, or withdraw approval for nursing programs as
- 8 provided in G.S. 90-171.39.
- 9 ...
- 10 (18) ~~Establish programs for aiding in the recovery and rehabilitation of nurses who~~
- 11 ~~experience chemical addiction or abuse or mental or physical disabilities and~~
- 12 ~~programs for monitoring such nurses for safe practice.~~ monitoring the
- 13 treatment, recovery, and safe practice of nurses with substance use disorders,
- 14 mental health disorders, or physical conditions impacting the ability to deliver
- 15 safe care.
- 16 (18a) ~~Establish programs~~ Enter into agreements for aiding in the remediation of
- 17 nurses who experience practice deficiencies.
- 18 ...
- 19 (24) ~~Order the production of any records concerning the practice of nursing~~
- 20 ~~relevant to a complaint received by the Board or an inquiry or investigation~~
- 21 ~~conducted by or on behalf of the Board.~~ or subpoena the production of any
- 22 patient records, documents, or other materials concerning any matter to be
- 23 heard before or inquired into by the Board, notwithstanding any other
- 24 provision of law providing for the application of any health care
- 25 provider-patient privilege regarding records, documents, or other materials.
- 26 All records, documents, or other materials compiled by the Board are subject
- 27 to G.S. 90-171.37C. Upon written request and after a hearing, the Board shall
- 28 revoke a subpoena if the Board finds the evidence does not relate to a matter
- 29 in issue, or if the subpoena does not describe the required evidence with
- 30 sufficient particularity, or if the subpoena is invalid for any other legal
- 31 reason."

SECTION 4. G.S. 90-171.27 reads as rewritten:

"§ 90-171.27. Expenses payable from fees collected by Board.

- 32 ...
- 33 (b) The schedule of fees shall not exceed the following rates:
- 34 (1) Application for examination leading to ~~certificate and a~~ license as a registered
- 35 nurse ~~\$75.00~~ \$100.00
- 36 (2) Application for ~~certificate and a~~ license as a registered nurse by endorsement
- 37 ~~\$150.00~~ \$150.00
- 38 (3) Application for each re-examination leading to ~~certificate and a~~ license as a
- 39 registered nurse ~~75.00~~ \$100.00
- 40 (4) Renewal of a license to practice as a registered nurse (two-year period)
- 41 ~~100.00~~ \$200.00
- 42 (5) Reinstatement of a lapsed license to practice as a registered nurse and renewal
- 43 fee ~~\$180.00~~ \$180.00
- 44 (6) Application for examination leading to ~~certificate and a~~ license as a licensed
- 45 practical nurse by examination ~~\$75.00~~ \$75.00
- 46 (7) Application for ~~certificate and a~~ license as a licensed practical nurse by
- 47 endorsement ~~\$150.00~~ \$150.00
- 48 (8) Application for each re-examination leading to ~~certificate and a~~ license as
- 49 licensed practical nurse ~~75.00~~ \$100.00
- 50
- 51

- 1 (2) ~~Has been convicted of or pleaded guilty or nolo contendere to any crime which~~
2 ~~indicates that the nurse is unfit or incompetent to practice nursing or that the~~
3 ~~nurse has deceived or defrauded the public.~~ a crime involving moral turpitude
4 ~~or the violation of a law involving the practice of nursing.~~
- 5 (3) ~~Has a mental or physical disability or uses any drug to a degree that interferes~~
6 ~~with his or her fitness to practice nursing.~~ Is unable to practice nursing with
7 ~~reasonable skill and safety to patients by reason of illness, excessive use of~~
8 ~~alcohol, drugs, chemicals, or any other type of material, or by reason of any~~
9 ~~physical or mental abnormality.~~
- 10 (4) Engages in conduct that endangers the public health.
- 11 (5) Is unfit or incompetent to practice nursing by reason of deliberate or negligent
12 acts or omissions regardless of whether actual injury to the patient is
13 established.
- 14 (6) Engages in conduct that deceives, defrauds, or harms the public in the course
15 of professional activities or services.
- 16 (6a) Commits acts of moral turpitude.
- 17 (6b) Engages in unprofessional conduct that is nonconforming to the standards of
18 acceptable and prevailing nursing practice or the ethics of the nursing
19 profession, even if a patient is not injured.
- 20 (6c) Commits acts of dishonesty, injustice, or immorality in the course of the
21 licensee's practice or otherwise, including acts outside of this State.
- 22 (6d) Has had a license or privilege to practice nursing denied, revoked, suspended,
23 restricted, or acted against by any jurisdiction. For purposes of this
24 subdivision, the licensing authority's acceptance of a license to practice
25 nursing that is voluntarily relinquished by a nurse, by stipulation, consent
26 order, or other settlement in response to or in anticipation of the filing of
27 administrative charges against the nurse's license, is an action against a license
28 to practice nursing. The Board is empowered and authorized to take action
29 based on the factual findings of the licensing authority that took action.
- 30 (6e) Fails to respond to the Board's inquiries in a reasonable manner or time
31 regarding any matter affecting the license to practice nursing.
- 32 (7) ~~Has violated any provision of this Article.~~ Article or any provision of the rules
33 ~~adopted by the Board under this Article.~~
- 34 (8) ~~Has willfully violated any rules enacted by the Board.~~
- 35 (b) The Board may take any of the actions specified above in this section when a
36 registered nurse approved to perform medical acts has violated rules governing the performance
37 of medical acts by a registered nurse; provided this shall not interfere with the authority of the
38 North Carolina Medical Board to enforce rules and regulations governing the performance of
39 medical acts by a registered nurse.
- 40 (c) The Board may reinstate a revoked license, revoke censure or ~~probative terms,~~
41 probation, or remove other licensure restrictions when it finds that the reasons for revocation,
42 censure or ~~probative terms, probation,~~ or other licensure restrictions no longer exist and that the
43 ~~nurse or applicant~~ licensee or applicant for a license can reasonably be expected to safely and
44 properly practice nursing.
- 45 (d) The Board retains jurisdiction over an expired, inactive, or voluntarily surrendered
46 license. The Board's jurisdiction over the licensee extends for all matters, known or unknown to
47 the Board, at the time of the expiration, inactivation, or surrender of the license.
- 48 (e) The Board, members of the Board, and staff shall not be held liable in any civil or
49 criminal proceeding for exercising the powers and duties authorized by law provided the person
50 was acting in good faith."

51 **SECTION 7.** G.S. 90-171.37A reads as rewritten:

1 **"§ 90-171.37A. Use of hearing committee and depositions.**

2 (a) The Board, in its discretion, may designate in writing three or more of its members to
3 conduct hearings as a hearing committee to ~~take~~receive evidence. A majority of the hearing
4 committee shall be licensed nurses.

5 (b) Evidence and testimony may be presented at hearings before the Board or a hearing
6 committee in the form of depositions before any person authorized to administer oaths in
7 accordance with the procedure for the taking of depositions in civil actions in the superior court.
8 At the discretion of the Board, witness testimony may be received by telephone or
9 videoconferencing at a hearing.

10"

11 **SECTION 8.** Article 9A of Chapter 90 of the General Statutes is amended by adding
12 new sections to read:

13 **"§ 90-171.37B. Appeal from Board's disciplinary action of licensee.**

14 (a) A licensee may appeal a public disciplinary action made by the Board under
15 G.S. 90-171.37(a). A licensee may appeal any public disciplinary action made by the Board to
16 the superior court located in the county where the licensee resides or where the Board is located
17 by filing written notice of appeal within 30 days after receipt of the Board's decision. A licensee
18 must state all exceptions to the Board's decision in the licensee's written notice of appeal and
19 properly identify the general court of justice where the licensee intends the appeal to be heard.

20 (b) Within 30 days of receiving a licensee's written notice of appeal, the Board shall
21 prepare, certify, and file the record, charges, notice of hearing, transcript of testimony, documents
22 and written evidence produced at the hearing, the Board's decision, and a licensee's notice of
23 appeal with the clerk of superior court in the county where the licensee appealed the Board's
24 decision.

25 **"§ 90-171.37C. Board to keep public records.**

26 (a) All records, papers, investigative information, and other documents containing
27 information that the Board, its members, or its employees possess, gathered, or received as a
28 result of investigations, inquiries, assessments, or interviews conducted in connection with a
29 licensing complaint, appeal, assessment, potential impairment matter, or disciplinary matter shall
30 not be considered public records under Chapter 132 of the General Statutes, and are privileged,
31 confidential, not subject to discovery, subpoena, or any means of legal compulsion for release to
32 anyone other than the Board, its employees, or consultants involved in the application for license,
33 impairment assessment, or discipline of a licensee, except as provided in subsection (b) of this
34 section. For the purposes of this section, "investigative information" means investigative files
35 and reports, information relating to the identity and report of a physician or other professional
36 performing an expert review for the Board, and any of the Board's deposition transcripts related
37 to a hearing not admitted into evidence.

38 (b) The Board shall provide the licensee or applicant for a license access to all
39 information in its possession that the Board intends to offer into evidence at the licensee's or
40 applicant's hearing, unless good cause is shown for delay. This information shall be subject to
41 any privilege or restriction set forth by rule, statute, or legal precedent and must be requested in
42 writing from the licensee or applicant who is the subject of the complaint or investigation. The
43 Board shall not be required to produce (i) information subject to attorney-client privilege or (ii)
44 investigative information that the Board will not offer into evidence, and is related to advice,
45 opinions, or recommendations of the Board's staff, consultants, or agents.

46 (c) Any licensee's notice of statement of charges, notice of hearing, and all information
47 contained in those documents shall be public records under Chapter 132 of the General Statutes.

48 (d) If the Board, its employees, or its agents possess investigative information indicating
49 a crime may have been committed, the Board may report the information to the appropriate law
50 enforcement agency or district attorney of the district in which the offense was committed. The
51 Board shall cooperate with and assist any law enforcement agency or district attorney conducting

1 a criminal investigation or prosecution of a licensee by providing relevant information. This
2 information shall be confidential under G.S. 132-1.4 and shall remain confidential after
3 disclosure to a law enforcement agency or district attorney.

4 (e) All licensees shall self-report to the Board any of the following within 30 days of their
5 arrest or indictment:

6 (1) Any felony arrest or indictment.

7 (2) Any arrest for driving while impaired or driving under the influence.

8 (3) Any arrest or indictment for the possession, use, or sale of any controlled
9 substance.

10 (f) The Board, its members, or its staff may release confidential information concerning
11 the denial, annulment, suspension, or revocation of a license to any other health care licensing
12 board in this State, other state, or country, or authorized Department of Health and Human
13 Services personnel who are charged with the enforcement or investigative responsibilities of
14 licensure.

15 If the Board releases this confidential information, the Board shall notify and provide a
16 summary of the information to the licensee within 60 days after the information is transmitted.
17 The licensee may make a written request that the Board provide the licensee a copy of all
18 information transmitted within 30 days of receiving notice of the initial transmittance. The Board
19 shall not provide the information if the information relates to an ongoing criminal investigation
20 by any law enforcement agency or authorized Department of Health and Human Services
21 personnel with enforcement or investigative responsibilities.

22 (g) Notwithstanding the provisions of G.S. 90-171.37C, the Board shall withhold the
23 identity of a patient, including information relating to dates and places of treatment, or any other
24 information that would tend to identify the patient, in any proceeding, record of a hearing, and in
25 the notice of charges against any licensee, unless the patient or the patient's representative
26 expressly consents to the public disclosure.

27 **"§ 90-171.37D. Service of notices.**

28 (a) Any notice required by this Article may be served either personally by an employee
29 of the Board or by an officer authorized by law to serve process, or by registered or certified
30 mail, return requested, directed to the licensee or applicant at his or her last known address as
31 shown by the records of the Board. If notice is served personally, it shall be deemed to have been
32 served at the time when the officer or employee of the Board delivers the notice to the person
33 addressed or delivers the notice at the licensee's or applicant's last known address as shown by
34 records of the Board with a person of suitable age and discretion then residing therein. Where
35 notice is served in a manner authorized by Rule 4(j) of the North Carolina Rules of Civil
36 Procedure, it shall be deemed to have been served on the date borne by the return receipt showing
37 delivery of the notice to the licensee's or applicant's last known address as shown by the records
38 of the Board, regardless of whether the notice was actually received or whether the notice was
39 unclaimed or undeliverable for any reason."

40 **SECTION 9.** G.S. 90-171.39 reads as rewritten:

41 **"§ 90-171.39. Approval.**

42 The Board shall designate persons to survey proposed nursing programs, including the
43 clinical facilities. ~~programs.~~ The persons designated by the Board shall submit a written report
44 of the survey to the Board. If in the opinion of the Board the standards for approved nursing
45 education are met, the program shall be given approval."

46 **SECTION 10.** G.S. 90-171.40 reads as rewritten:

47 **"§ 90-171.40. Ongoing approval.**

48 The Board shall review all nursing programs in the State at least every ~~eight~~ 10 years or more
49 often as considered necessary. If the Board determines that any approved nursing program does
50 not meet or maintain the standards required by the Board, the Board shall give written notice
51 specifying the deficiencies to the institution responsible for the program. The Board shall

1 ~~withdraw approval from~~ evaluate and take appropriate action, including withdrawing approval,
2 for a program that fails to correct deficiencies within a reasonable time. The Board shall publish
3 ~~annually~~ a list of nursing programs in this State showing their approval status."

4 **SECTION 11.** G.S. 90-171.43 reads as rewritten:

5 **"§ 90-171.43. License required.**

6 (a) No person shall practice or offer to practice as a registered nurse or licensed practical
7 nurse, or use the word "nurse" as a title for herself or himself, or use an abbreviation to indicate
8 that the person is a registered nurse or licensed practical nurse, unless the person is currently
9 licensed as a registered nurse or licensed practical nurse as provided by this Article. If the word
10 "nurse" is part of a longer title, such as "nurse's aide", a person who is entitled to use that title
11 shall use the entire title and may not abbreviate the title to "nurse". This Article shall not,
12 however, be construed to prohibit or limit the following:

- 13 (1) The performance by any person of any act for which that person holds a
14 license issued pursuant to North Carolina law;
- 15 (2) The clinical practice by students enrolled in approved nursing programs,
16 continuing education programs, or refresher courses under the supervision of
17 qualified faculty;
- 18 (3) The performance of nursing performed by persons who hold a temporary
19 license issued pursuant to G.S. 90-171.33;
- 20 (4) The delegation to any person, including a member of the patient's family, by
21 a physician licensed to practice medicine in North Carolina, a licensed dentist
22 or registered nurse of those patient-care services which are routine, repetitive,
23 limited in scope that do not require the professional judgment of a registered
24 nurse or licensed practical nurse;
- 25 (5) Assistance by any person in the case of emergency.

26 Any person permitted to practice nursing without a license as provided in subdivision (2) or
27 (3) of this section shall be held to the same standard of care as any licensed nurse.

28 (b) The Board shall have the authority to promulgate rules to enforce the provisions of
29 this section."

30 **SECTION 12.** Article 9A of Chapter 90 of the General Statutes is amended by
31 adding a new section to read:

32 **"§ 90-171.49. Disasters and emergencies.**

33 If the Governor declares a state of emergency or a county or municipality enacts ordinances
34 under G.S. 166A-19.31, 160A-174, 153A-121, or Article 22 of Chapter 130A of the General
35 Statutes, the Board may waive the requirements of this Article to allow emergency health services
36 to the public."

37 **SECTION 13.** G.S. 90-171.47 reads as rewritten:

38 **"§ 90-171.47. Reports: immunity from suit.**

39 Any person who has reasonable cause to suspect misconduct or incapacity of a licensee or
40 who has reasonable cause to suspect that any person is in violation of this Article, including those
41 actions specified in ~~G.S. 90-171.37(1) through (8), G.S. 90-171.37, G.S. 90-171.43, 90-171.43,~~
42 ~~and G.S. 90-171.44, 90-171.44~~ shall report the relevant facts to the Board. Upon receipt of such
43 charge or upon its own initiative, the Board may give notice of an administrative hearing or may,
44 after diligent investigation, dismiss unfounded charges. Any person making a report pursuant to
45 this section shall be immune from any criminal prosecution or civil liability resulting therefrom
46 unless such person knew the report was false or acted in reckless disregard of whether the report
47 was false."

48 **SECTION 14.** G.S. 90-171.48 reads as rewritten:

49 **"§ 90-171.48. Criminal history record checks of applicants for licensure.**

50 ...

1 (c) If an applicant's criminal history record check reveals one or more convictions listed
2 under subsection (a)(2) of this section, the conviction shall not automatically bar licensure. The
3 Board shall consider all of the following factors regarding the conviction:

- 4 (1) The level of seriousness of the crime.
- 5 (2) The date of the crime.
- 6 (3) The age of the person at the time of the conviction.
- 7 (4) The circumstances surrounding the commission of the crime, if known.
- 8 (5) The nexus between the criminal conduct of the person and the job duties of
9 the position to be filled.
- 10 (6) The person's prison, jail, probation, parole, rehabilitation, and employment
11 records since the date the crime was committed.
- 12 (7) The subsequent commission by the person of a crime listed in subsection (a)
13 of this section.

14 If, after reviewing the factors, the Board determines that the grounds set forth in subsections (1),
15 (2), (3), (4), (5), ~~or (6)-(6), (6a), (6b), (6c), (6d), or (6e)~~ of G.S. 90-171.37 exist, the Board may
16 deny licensure of the applicant. The Board may disclose to the applicant information contained
17 in the criminal history record check that is relevant to the denial. The Board shall not provide a
18 copy of the criminal history record check to the applicant. The applicant shall have the right to
19 appear before the Board to appeal the Board's decision. However, an appearance before the full
20 Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B
21 of the General Statutes.

22"

23 **SECTION 15.** This act becomes effective October 1, 2019, and applies to licenses
24 granted or renewed on or after that date and actions taken by the Board of Nursing on or after
25 that date.