

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 195
Committee Substitute Favorable 3/19/19
Committee Substitute #2 Favorable 3/27/19
PROPOSED COMMITTEE SUBSTITUTE H195-PCS40261-TMf-6

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



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1 education program standards for nurse faculty. Candidates eligible for election to the Board as
 2 nurse educators are not eligible for election as the at-large member.

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

31 ...

32 (g) ~~Reimbursement.—~~Compensation. – Board members are entitled to receive
 33 compensation and reimbursement ~~as authorized by G.S. 93B-5 for all expenses proper and~~
 34 ~~necessary as determined by the Board to discharge its duties and to enforce the laws regulating~~
 35 ~~the practice of nursing. The per diem compensation of Board members shall not exceed two~~
 36 ~~hundred dollars (\$200.00) per member for time spent in the performance and discharge of duties~~
 37 ~~as a member."~~

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

39 **"§ 90-171.23. Duties, powers, and meetings.**

40 ...

41 (b) Duties, powers. The Board is empowered to:

42 ...

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

1	75.00\$
2	<u>100.00</u>	
3	(7) Application for certificate and a license as a licensed practical nurse by	
4	endorsement	\$150.00
5	(8) Application for each re-examination leading to certificate and a license as	
6	licensed practical nurse	75.00\$100.00
7	(9) Renewal of license to practice as a licensed practical nurse (two-year period)	
8	100.00\$
9	<u>200.00</u>	
10	(10) Reinstatement of a lapsed license to practice as a licensed practical nurse and	
11	renewal	fee
12	180.00\$
13	<u>280.00</u>	
14	(11) Application fee for a retired registered nurse status or a retired licensed	
15	practical nurse status	\$50.00
16	(12) Reinstatement of a retired registered nurse to practice as a registered nurse or	
17	a retired licensed practical nurse to practice as a licensed practical nurse	
18	(two-year period).....	100.00\$200.00
19	(13) Reasonable charge for duplication services and materials.	

20 A fee for an item listed in this schedule shall not increase from one year to the next by more
 21 than twenty percent (20%).
 22"

23 **SECTION 5.** G.S. 90-171.33 reads as rewritten:

24 "**§ 90-171.33. Temporary license.**

25 (a) ~~Until the implementation of the computer adaptive licensure examination, the Board~~
 26 ~~may issue a nonrenewable temporary license to persons who are applying for licensure under~~
 27 ~~G.S. 90-171.30, and who are scheduled for the licensure examination at the first opportunity after~~
 28 ~~graduation, for a period not to exceed the lesser of nine months or the date of applicant's~~
 29 ~~notification of the results of the licensure examination. The Board shall revoke the temporary~~
 30 ~~license of any person who does not take the examination as scheduled, or who has failed the~~
 31 ~~examination for licensure as provided by this act.~~

32 (b) ~~Upon implementation of the computer adaptive licensure examination, no temporary~~
 33 ~~licenses will be issued to persons who are applying for licensure under G.S. 90-171.30.~~

34 (c) The Board may issue a nonrenewable temporary license to persons applying for
 35 licensure under G.S. 90-171.32 for a period not to exceed the lesser of six months or until the
 36 Board determines whether the applicant is qualified to practice nursing in North Carolina.
 37 Temporary licensees may perform patient-care services within limits defined by the Board. In
 38 defining these limits, the Board shall consider the ability of the temporary licensee to safely and
 39 properly carry out patient-care services. Temporary licensees shall be held to the standard of care
 40 of a fully licensed nurse."

41 **SECTION 6.** G.S. 90-171.37 reads as rewritten:

42 "**§ 90-171.37. ~~Revocation, discipline, suspension, probation, or denial of~~**
 43 **licensure.Disciplinary authority.**

44 (a) The Board may initiate an investigation upon receipt of information about any
 45 practice that might violate any provision of this Article or any rule or regulation promulgated by
 46 the Board. In accordance with the provisions of Chapter 150B of the General Statutes, the Board
 47 shall have the power and authority to: (i) ~~refuse to issue a license to practice nursing;~~ (ii) ~~refuse~~
 48 ~~to issue a certificate of renewal of a license to practice nursing;~~ (iii) ~~revoke or suspend a license~~
 49 ~~to practice nursing; and (iv) invoke other such disciplinary measures, censure, or probative terms~~
 50 ~~against a licensee as it deems fit and proper; in any instance or instances in which the Board is~~
 51 ~~satisfied that the applicant or licensee:~~ to take the following actions: (i) place on probation, with

1 or without conditions; (ii) impose limitations and conditions; (iii) accept voluntary surrender of
 2 a license; (iv) publicly reprimand; (v) issue public letters of concern; (vi) require satisfactory
 3 completion of treatment programs, or remedial or educational training; (vii) deny or refuse to
 4 issue a license, deny or refuse to issue a license renewal, issue a fine, suspend a license, and
 5 revoke a license or privilege to practice nursing in this State for any person the Board finds to
 6 have done any of the following:

- 7 (1) Has given false information or has withheld material information from the
 8 Board in procuring or attempting to procure a license to practice nursing.
 9 (2) Has been convicted of ~~or pleaded guilty or nolo contendere to any crime which~~
 10 ~~indicates that the nurse is unfit or incompetent to practice nursing or that the~~
 11 ~~nurse has deceived or defrauded the public.~~ a crime involving moral turpitude
 12 or the violation of a law involving the practice of nursing.
 13 (3) ~~Has a mental or physical disability or uses any drug to a degree that interferes~~
 14 ~~with his or her fitness to practice nursing.~~ Is unable to practice nursing with
 15 reasonable skill and safety to patients by reason of illness, excessive use of
 16 alcohol, drugs, chemicals, or any other type of material, or by reason of any
 17 physical or mental abnormality.
 18 (4) Engages in conduct that endangers the public health.
 19 (5) Is unfit or incompetent to practice nursing by reason of deliberate or negligent
 20 acts or omissions regardless of whether actual injury to the patient is
 21 established.
 22 (6) Engages in conduct that deceives, defrauds, or harms the public in the course
 23 of professional activities or services.
 24 (6a) Commits acts of moral turpitude.
 25 (6b) Engages in unprofessional conduct that is nonconforming to the standards of
 26 acceptable and prevailing nursing practice or the ethics of the nursing
 27 profession, even if a patient is not injured.
 28 (6c) Commits acts of dishonesty, injustice, or immorality in the course of the
 29 licensee's practice or otherwise, including acts outside of this State.
 30 (6d) Has had a license or privilege to practice nursing denied, revoked, suspended,
 31 restricted, or acted against by any jurisdiction. For purposes of this
 32 subdivision, the licensing authority's acceptance of a license to practice
 33 nursing that is voluntarily relinquished by a nurse, by stipulation, consent
 34 order, or other settlement in response to or in anticipation of the filing of
 35 administrative charges against the nurse's license, is an action against a license
 36 to practice nursing. The Board is empowered and authorized to take action
 37 based on the factual findings of the licensing authority that took action.
 38 (6e) Fails to respond to the Board's inquiries in a reasonable manner or time
 39 regarding any matter affecting the license to practice nursing.
 40 (7) Has violated any provision of this ~~Article.~~ Article or any provision of the rules
 41 adopted by the Board under this Article.
 42 (8) ~~Has willfully violated any rules enacted by the Board.~~

43 (b) The Board may take any of the actions specified above in this section when a
 44 registered nurse approved to perform medical acts has violated rules governing the performance
 45 of medical acts by a registered nurse; provided this shall not interfere with the authority of the
 46 North Carolina Medical Board to enforce rules and regulations governing the performance of
 47 medical acts by a registered nurse.

48 (c) The Board may reinstate a revoked license, revoke censure or ~~probative terms,~~
 49 probation, or remove other licensure restrictions when it finds that the reasons for revocation,
 50 censure or ~~probative terms,~~ probation, or other licensure restrictions no longer exist and that the

1 ~~nurse or applicant~~ licensee or applicant for a license can reasonably be expected to safely and
2 properly practice nursing.

3 (d) The Board retains jurisdiction over an expired, inactive, or voluntarily surrendered
4 license. The Board's jurisdiction over the licensee extends for all matters, known or unknown to
5 the Board, at the time of the expiration, inactivation, or surrender of the license.

6 (e) The Board, members of the Board, and staff shall not be held liable in any civil or
7 criminal proceeding for exercising the powers and duties authorized by law provided the person
8 was acting in good faith."

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

10 **"§ 90-171.37A. Use of hearing committee and depositions.**

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

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

19"

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

22 **"§ 90-171.37B. Appeal from Board's disciplinary action of licensee.**

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

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

34 **"§ 90-171.37C. Board to keep public records.**

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

47 (b) The Board shall provide the licensee or applicant for a license access to all
48 information in its possession that the Board intends to offer into evidence at the licensee's or
49 applicant's hearing, unless good cause is shown for delay. This information shall be subject to
50 any privilege or restriction set forth by rule, statute, or legal precedent and must be requested in
51 writing from the licensee or applicant who is the subject of the complaint or investigation. The

1 Board shall not be required to produce (i) information subject to attorney-client privilege or (ii)
2 investigative information that the Board will not offer into evidence, and is related to advice,
3 opinions, or recommendations of the Board's staff, consultants, or agents.

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

6 (d) If the Board, its employees, or its agents possess investigative information indicating
7 a crime may have been committed, the Board may report the information to the appropriate law
8 enforcement agency or district attorney of the district in which the offense was committed. The
9 Board shall cooperate with and assist any law enforcement agency or district attorney conducting
10 a criminal investigation or prosecution of a licensee by providing relevant information. This
11 information shall be confidential under G.S. 132-1.4 and shall remain confidential after
12 disclosure to a law enforcement agency or district attorney.

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

15 (1) Any felony arrest or indictment.

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

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

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

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

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

36 **"§ 90-171.37D. Service of notices.**

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

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

50 **"§ 90-171.39. Approval.**

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

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

6 **"§ 90-171.40. Ongoing approval.**

7 The Board shall review all nursing programs in the State at least every ~~eight~~ 10 years or more
8 often as considered necessary. If the Board determines that any approved nursing program does
9 not meet or maintain the standards required by the Board, the Board shall give written notice
10 specifying the deficiencies to the institution responsible for the program. The Board shall
11 ~~withdraw approval from~~ evaluate and take appropriate action, including withdrawing approval,
12 for a program that fails to correct deficiencies within a reasonable time. The Board shall publish
13 ~~annually~~ a list of nursing programs in this State showing their approval status."

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

15 **"§ 90-171.43. License required.**

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

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

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

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

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

42 **"§ 90-171.49. Disasters and emergencies.**

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

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

48 **"§ 90-171.47. Reports: immunity from suit.**

49 Any person who has reasonable cause to suspect misconduct or incapacity of a licensee or
50 who has reasonable cause to suspect that any person is in violation of this Article, including those
51 actions specified in ~~G.S. 90-171.37(1) through (8),~~ G.S. 90-171.37, G.S. 90-171.43, and

1 G.S. 90-171.44, shall report the relevant facts to the Board. Upon receipt of such charge or upon
2 its own initiative, the Board may give notice of an administrative hearing or may, after diligent
3 investigation, dismiss unfounded charges. Any person making a report pursuant to this section
4 shall be immune from any criminal prosecution or civil liability resulting therefrom unless such
5 person knew the report was false or acted in reckless disregard of whether the report was false."

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

7 "**§ 90-171.48. Criminal history record checks of applicants for licensure.**

8 ...

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

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

22 If, after reviewing the factors, the Board determines that the grounds set forth in ~~subsections (1),~~
23 ~~(2), (3), (4), (5), or (6) of G.S. 90-171.37~~ exist, the Board may deny licensure of the applicant.
24 The Board may disclose to the applicant information contained in the criminal history record
25 check that is relevant to the denial. The Board shall not provide a copy of the criminal history
26 record check to the applicant. The applicant shall have the right to appear before the Board to
27 appeal the Board's decision. However, an appearance before the full Board shall constitute an
28 exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

29"

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