

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 238 (Delegate Nathan-Pulliam, *et al.*)
Health and Government Operations Education, Health, and Environmental Affairs

State Board of Nursing - Nurses, Nursing Assistants, Medication Technicians, and
Electrologists - Licensure and Certification Requirements

This bill extends the statute of limitations for prosecution of certain disciplinary violations, clarifies licensing requirements, and repeals the State Board of Nursing's authority to accept a criminal history records check (CHRC) from another state.

Fiscal Summary

State Effect: The bill does not materially affect governmental finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Statute of Limitations: The bill extends the statute of limitations for prosecution of a misdemeanor offense for certain violations of the Maryland Nurse Practice Act or Maryland Electrologist Act (including practicing without a license) from one to three years after the offense was committed.

Licensing Issues Relating to the Nurse Licensure Compact: The bill requires a registered nurse (RN) or licensed practical nurse (LPN) who resides in a Nurse Licensure Compact state (which includes Maryland) to hold a license in only one party state at a time. The license must be issued by the home state. Applicants for an RN or LPN license must provide the board with evidence that their primary state of residence is Maryland or a

nonparty state. Applicants who reside in another party state are not entitled to be licensed in Maryland.

Advanced Practice Nurses: The bill adds a definition for “advanced practice nurse,” which, although already regulated is not a defined term, and clarifies the application process for advanced practice certification. The bill establishes title protection for nurse anesthetists, nurse midwives, nurse psychotherapists, and clinical nurse specialists. An individual certified as a nurse anesthetist, nurse midwife, nurse psychotherapist, or clinical nurse specialist prior to October 1, 2012, is deemed to have met the educational requirements for advanced practice clarified under the bill.

Nursing Services During a State of Emergency: Nurses with active unencumbered licenses in other states may practice in Maryland during a state of emergency if (1) they are assigned by the American Red Cross or a member of the Maryland Emergency Management Assistance Compact; (2) the Governor has declared a state of emergency; and (3) the nurse reports to the designated staging area.

Criminal History Records Checks: The bill repeals the board’s authority to grant a waiver from CHRC requirements to RN, LPN, and certified nursing assistant (CNA) applicants who have completed such a check through another state board of nursing within the previous five years.

Miscellaneous Provisions: The bill clarifies that the board provides licensure by endorsement for individuals actively licensed in another state rather than grants a waiver. Individuals who provide gratuitous care for domestic partners may provide nursing services without licensure. The bill clarifies that a preceptorship program includes clinical training for both nursing students and nurses returning to active practice from inactive status. The requirement that the board file a notice in the *Maryland Register* of each revocation or suspension of a license within 24 hours of the revocation or suspension is repealed. The bill clarifies which individuals must be licensed to practice by prohibiting a person from practicing, attempting to practice, or offering to practice registered nursing as an advanced practice nurse, licensed practical nursing, or electrology without authorization from the board. The bill also repeals an outdated reference to skilled nursing assistants.

Current Law: A person who practices without a license or certificate from the board is guilty of a misdemeanor and on conviction subject to a fine of up to \$5,000, one year imprisonment, or both. All civil and administrative penalties accrue to the general fund. The board does not have the authority to issue cease and desist orders or seek injunctive relief against individuals practicing without a license or otherwise violating the Maryland Nurse Practice Act or Maryland Electrologists Act.

In general, a prosecution for a misdemeanor must be instituted within one year after the offense was committed. Certain types of violations have a longer statute of limitations as specified in law including violations of election law, welfare fraud, Medicaid fraud, tax-related offenses, vehicular manslaughter, the unauthorized practice of medicine, and offenses by nursing home administrators.

The board certifies seven types of advanced practice nurses (RNs who receive a certification of advanced practice status in addition to their RN licensure): nurse anesthetists, nurse midwives, nurse practitioners, infusion therapy nurses, sexual assault forensic examiner (SAFE) nurses, workers' compensation medical case workers, and nurse psychotherapists. Each type of advanced practice certification has specific requirements set out in regulation. In fiscal 2011, there were 4,598 advanced practice certifications held by registered nurses in Maryland.

An individual who is assigned by the American Red Cross to a disaster situation in Maryland who is licensed in another state is exempt from the requirement to be licensed in Maryland.

Although Maryland law authorizes waiver of CHRCs for certain applicants who have had such checks in another state within the previous five years, P.L. 92-544 prohibits federal criminal records obtained by boards of nursing as part of the licensing process from being shared with health care employers or others.

Background: The Nurse Licensure Compact, administered by the National Council of State Boards of Nursing, enables multistate licensure for RNs and LPNs. A "party state" is any state that has adopted the compact, which allows nurses to practice across state lines, enables cooperation among state boards of nursing, and improves enforcement of licensure laws across state boundaries. Twenty-four states (including Maryland) are party states.

The 2011 full sunset evaluation of the board conducted by the Department of Legislative Services included a recommendation that statute be amended to remove the authority to waive RN, LPN, and CNA applicants from a CHRC if they have completed such a check through another state board of nursing within the five years preceding the date of their application as such waivers cannot be granted because obtaining the criminal history records information from other states violates federal law.

Additional Information

Prior Introductions: None.

Cross File: SB 337 (Senator Conway) - Education, Health, and Environmental Affairs.

Information Source(s): National Council of State Boards of Nursing, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Office of Administrative Hearings, Department of Legislative Services

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