

Chapter 222

(House Bill 611)

AN ACT concerning

State Board of Nursing – Sunset Extension, Licensure Exceptions, and Board Operations and Membership

FOR the purpose of continuing the State Board of Nursing in accordance with the provisions of the Maryland Program Evaluation Act (sunset law) by extending to a certain date the termination provisions relating to the statutory and regulatory authority of the Board; altering the exceptions to the registered nursing and licensed practical nurse licensure requirements; providing that, for a certain period of time, the Secretary of Health, rather than the Board, has authority over the infrastructure operations of the Board, including the authority to employ staff for the Board and set compensation for certain employees as determined in consultation with the Secretary of Budget and Management; prohibiting the Board of Nursing Fund from being used to pay for infrastructure operations for a certain period of time; ~~altering certain qualifications for the executive director of the Board after the authority of the Secretary of Health over the Board's infrastructure operations is terminated;~~ requiring the Board to hire a certain consultant to conduct an independent evaluation of the Board; requiring that the terms of certain members of the Board end on certain dates; and generally relating to the State Board of Nursing.

BY repealing and reenacting, with amendments,

Article – Health Occupations

Section 1–203(b), ~~8–204(d)(3)~~, 8–205(a)(8), 8–206(e)(1), 8–301(c), 8–6B–30, 8–6C–26, and 8–802

Annotated Code of Maryland

(2021 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, without amendments,

Article – Health Occupations

Section 8–206(a) and 8–301(a) and (b)

Annotated Code of Maryland

(2021 Replacement Volume and 2022 Supplement)

BY repealing

Article – Health Occupations

Section 8–204(d)

Annotated Code of Maryland

(2021 Replacement Volume and 2022 Supplement)

BY adding to

Article – Health Occupations

Section 8–204(d)

Annotated Code of Maryland
(2021 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Health Occupations

8–205.

(a) In addition to the powers and duties set forth elsewhere in this title, the Board has the following powers and duties:

(8) To submit to the Governor, the Secretary, and, in accordance with § 2–1257 of the State Government Article, the General Assembly, an annual report that includes:

(i) The following data calculated on a fiscal year basis:

1. The number of initial and renewal licenses and certificates issued;

2. The number of positive and negative criminal history records checks results received;

3. The number of individuals denied initial or renewal licensure or certification due to positive criminal history records checks results;

4. The number of individuals denied licensure or certification due to reasons other than a positive criminal history records check;

5. The number of new complaints received;

6. The number of complaints carried over from year to year;

7. The most common grounds for complaints; [and]

8. The number and types of disciplinary actions taken by the Board; and

9. ANY ADDITIONAL AGGREGATE DATA, IDENTIFIED BY THE BOARD IN CONSULTATION WITH STAKEHOLDERS, DETERMINED TO BE NECESSARY TO FACILITATE WORKFORCE AND HEALTH PLANNING PURPOSES THAT DOES NOT REFERENCE ANY INDIVIDUAL’S NAME OR OTHER PERSONAL IDENTIFIER; AND

(ii) By analyzing information gathered from renewal applications submitted under § 8–312 of this title, an evaluation of the State’s nursing workforce by certification level, region, and type of workplace, including hospitals and home health workers;

8–301.

(a) Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice registered nursing in this State.

(b) Except as otherwise provided in this title, an individual shall be licensed by the Board before the individual may practice licensed practical nursing in this State.

(c) **[This] SUBSECTIONS (A) AND (B) OF THIS** section **[does] DO** not apply to:

(1) A student enrolled in an approved education program while practicing registered nursing or licensed practical nursing in that program;

(2) An individual employed by the federal government to practice registered nursing or licensed practical nursing while practicing within the scope of that employment, if the individual is authorized by any state to practice registered nursing or licensed practical nursing;

(3) An individual permitted to practice registered nursing or licensed practical nursing under rules and regulations adopted by the Board, if the individual:

(i) Otherwise has qualified to practice registered nursing or licensed practical nursing in any other state or country and is in this State temporarily; or

(ii) Has an application for a license pending before the Board:

1. But has not taken the examination required under this title;

2. Has taken an examination under this title, but the results of the examination are not yet known; **[or]**

3. Has taken and passed an examination under this title, but is waiting for the completion of the criminal history records check; **OR**

4. **HAS TAKEN AND FAILED AN EXAMINATION REQUIRED UNDER THIS TITLE BUT HAS NOT FAILED THE EXAMINATION MORE THAN ONE TIME WITHIN THE 120-DAY PERIOD IMMEDIATELY ~~PRECEDING~~ FOLLOWING THE SUBMISSION OF THE APPLICATION TO THE BOARD;**

(4) An individual who provides gratuitous care for friends, domestic partners, or family members; or

(5) An individual who responds to a disaster situation in this State to practice registered nursing or licensed practical nursing, if:

(i) The individual has an active unencumbered license to practice registered nursing or licensed practical nursing in another state and the individual is assigned by:

1. The American Red Cross; or

2. A member of the Maryland Emergency Management Assistance Compact under § 14–803 of the Public Safety Article;

(ii) The Governor has declared a State of Emergency by Executive Order or proclamation in accordance with § 3–401 of the State Government Article; and

(iii) The individual reports to the designated staging area in accordance with § 14–803(2)(b)(5)(iv) of the Public Safety Article.

8–6B–30.

Subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act, and subject to the termination of this title under § 8–802 of this title, this subtitle and all rules and regulations adopted under this subtitle shall terminate and be of no effect after July 1, [2023] **2025**.

8–6C–26.

Subject to the evaluation and reestablishment provisions of the Maryland Program Evaluation Act, and subject to the termination of this subtitle under § 8–802 of this title, this subtitle and all regulations adopted under this subtitle shall terminate and be of no effect after July 1, [2023] **2025**.

8–802.

Subject to the evaluation and reestablishment provisions of the Program Evaluation Act, the provisions of this title and of any rule or regulation adopted under this title shall terminate and be of no effect after July 1, [2023] **2025**.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Health Occupations

1-203.

(b) (1) (I) IN THIS SUBSECTION, “INFRASTRUCTURE OPERATIONS” MEANS THE ADMINISTRATIVE ACTIVITIES OF A BOARD OR COMMISSION ESTABLISHED UNDER THIS ARTICLE, INCLUDING TOOLS AND RESOURCES FOR THE USE AND SUPPORT OF DELIBERATIVE ACTIONS.

(II) “INFRASTRUCTURE OPERATIONS” DOES NOT INCLUDE ~~LICENSING;~~

1. POLICY OR REGULATORY DECISIONS OF THE BOARD OR COMMISSION; OR

2. LICENSING, INVESTIGATION, OR DISCIPLINARY ACTIVITIES.

(2) [The] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, THE power of the Secretary to transfer staff or functions of units in the Department does not apply to any staff of a board or commission, established under this article, or to any functions that pertain to licensing, disciplinary, or enforcement authority, or to any other authority specifically delegated by law to a board or commission.

(3) THE SECRETARY HAS AUTHORITY OVER THE INFRASTRUCTURE OPERATIONS OF THE STATE BOARD OF NURSING ESTABLISHED UNDER TITLE 8 OF THIS ARTICLE.

8-204.

[(d) The Board may:

(1) Employ a staff in accordance with the State budget;

(2) Define the duties of its staff; and

(3) Employ:

(i) An executive director who shall be a registered nurse with a minimum of a master’s degree in nursing or the equivalent, in the judgment of the Board, in professional education and administrative experience; and

(ii) A deputy director who shall assume the duties and authority of the executive director in the absence of the executive director.]

(D) (1) (I) THE SECRETARY MAY EMPLOY A STAFF FOR THE BOARD IN ACCORDANCE WITH THE STATE BUDGET.

(II) THE SECRETARY MAY DESIGNATE ONE OF THE STAFF WHO IS A REGISTERED NURSE AS AN EXECUTIVE DIRECTOR.

(2) THE SECRETARY MAY SET THE COMPENSATION OF AN EMPLOYEE OF THE BOARD IN A POSITION THAT:

(I) IS UNIQUE TO THE BOARD;

(II) REQUIRES SPECIFIC SKILLS OR EXPERIENCE TO PERFORM THE DUTIES OF THE POSITION; AND

(III) DOES NOT REQUIRE THE EMPLOYEE TO PERFORM FUNCTIONS THAT ARE COMPARABLE TO FUNCTIONS PERFORMED IN OTHER UNITS OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

(3) THE SECRETARY OF BUDGET AND MANAGEMENT, IN CONSULTATION WITH THE SECRETARY, SHALL DETERMINE THE POSITIONS FOR WHICH THE SECRETARY MAY SET COMPENSATION UNDER PARAGRAPH (2) OF THIS SUBSECTION.

8-206.

(a) There is a Board of Nursing Fund.

(e) (1) **(I)** The Board of Nursing Fund shall be used exclusively to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the Board as provided by the provisions of this title.

(II) THE BOARD OF NURSING FUND MAY NOT BE USED TO PAY FOR INFRASTRUCTURE OPERATIONS, AS DEFINED IN § 1-203(B) OF THIS ARTICLE.

~~SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:~~

~~**Article Health Occupations**~~

~~§ 204.~~

~~(d) The Board may:~~

~~(3) Employ:~~

~~(i) An executive director [who shall be a registered nurse with a minimum of a master's degree in nursing or the equivalent, in the judgment of the Board, in professional education and administrative experience]; and~~

~~(ii) A deputy director who shall assume the duties and authority of the executive director in the absence of the executive director.~~

SECTION ~~4~~ 3. AND BE IT FURTHER ENACTED, That:

(a) In this section, "Board" means the State Board of Nursing.

(b) Subject to subsection (c) of this section, the Board shall hire an external consultant approved by the Secretary of Health to conduct an independent evaluation of the Board to develop an action plan to implement the recommendations identified in the report the Board submitted as required by the Fiscal 2022 Joint Chairmen's Report.

(c) The action plan required under subsection (b) of this section shall be developed in partnership with the Department of Budget and Management, the Maryland Department of Health, and the Department of Information Technology, and shall include:

(1) a gap analysis to address the Board's immediate infrastructure needs and to identify resources needed for the Board's long-term sustainability and a plan to fill all Board staff vacancies and process personnel actions;

(2) the identification of new workflows to reduce the time to fill Board staff vacancies;

(3) an evaluation of the qualifications necessary to serve as Executive Director of the Board, including a recommendation on whether to repeal the requirement that the Executive Director be a registered nurse;

~~(3)~~ (4) a plan to hire additional nurse and nonnurse investigators to ensure timely processing of complaints submitted to the Board;

~~(4)~~ (5) an update of the organizational structure of the Board to make leadership more effective and the provision of the new organizational chart to Board staff and members and the Maryland Department of Health;

~~(5)~~ (6) a plan to create and staff a new Office of Compliance to implement relevant recommendations to ensure ongoing adherence to State and national standards;

~~(6)~~ (7) a plan to create and staff a Communications Department within the Operations Division to relieve operational staff of duties related to constituent communication and provide responsive service, improve public perception of the Board, and upgrade social media interaction;

~~(7)~~ (8) strategic goals established in collaboration with the Board President and Executive Director; and

~~(8)~~ (9) a review of the Board's fee structure and rates and a comparison of the fees and rates with neighboring states.

(d) Notwithstanding any other provision of law, the Board may use funds from the Board of Nursing Fund to cover the cost of the independent evaluation required under subsection (b) of this section.

(e) (1) On or before September 1, 2023, the external consultant hired under this section shall report its findings and the action plan developed under this section to the Senate Finance Committee and the House Health and Government Operations Committee in accordance with § 2-1257 of the State Government Article.

(2) The report submitted under paragraph (1) of this subsection may serve as the basis for additional recommendations made by the Office of Program Evaluation and Government Accountability as part of the performance evaluation of the Board directed by the Executive Director of the Department of Legislative Services on January 3, 2023.

(f) On or before December 1, 2023, the Board shall report to the Governor and, in accordance with § 2-1257 of the State Government Article, the Senate Finance Committee and the House Health and Government Operations Committee on average processing times for fiscal year 2023 for:

(1) issuing initial licenses, certifications, and renewals, as measured from the date the applicant passed the NCLEX, if applicable, or from the date the initial application was submitted, as opposed to the date the completed application was submitted;

(2) the issuance of authorization to test; and

(3) the approval of proposed nursing curriculum revisions, new nursing education programs, new certified nursing assistant education programs, new faculty, and new clinical sites.

SECTION ~~5~~ 4. AND BE IT FURTHER ENACTED, That:

(a) The terms of the members of the State Board of Nursing who are in office on the effective date of this Act shall end as follows:

(1) the terms of ~~five~~ seven members shall end on ~~July~~ May 1, 2023; and

(2) the terms of ~~five~~ seven members shall end on ~~October~~ November 1, 2023; and

~~(3) the terms of four members shall end on January 1, 2024.~~

(b) (1) Subject to the provisions of § 8–202 of the Health Occupations Article, a member of the Board whose term ends under subsection (a) of this section may apply for reappointment.

(2) The appointment of a member under § 8–202(b)(8) of the Health Occupations Article who is appointed by the Governor is subject to the advice and consent of the Senate during the legislative session immediately following the date of appointment.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, a member of the Board who was appointed to fill a vacancy created under subsection (a) of this section shall serve for the remainder of the term.

(ii) If a member who applies for reappointment under paragraph (1) of this subsection is reappointed, the member shall be considered appointed on the date of the member's initial appointment and is subject to the requirements of § 8–202(i) of the Health Occupations Article.

~~SECTION 6. AND BE IT FURTHER ENACTED, That Section 3 of this Act shall take effect July 1, 2025.~~

SECTION ~~7.~~ 5. AND BE IT FURTHER ENACTED, That, ~~except as provided in Section 6 of this Act,~~ this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a ye and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted. Section 2 of this Act shall remain effective through June 30, 2025, and, at the end of June 30, 2025, Section 2 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved by the Governor, April 24, 2023.