

1 HB527
2 129583-1
3 By Representatives Buttram and Sanderford
4 RFD: Boards, Agencies and Commissions
5 First Read: 14-APR-11

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8 SYNOPSIS: Under existing law, the State Board of
9 Nursing employs investigators who investigate
10 alleged violations of the Nurse Practice Act,
11 including violations involving drugs or controlled
12 substances. The investigators do not have the power
13 of peace officers and are not required to meet the
14 minimum standards for peace officers.

15 This bill would grant investigators of the
16 Board of Nursing the authority to exercise the
17 powers of peace officers in investigating alleged
18 violations of the Nurse Practice Act by persons
19 licensed by the board and would require the
20 investigators to meet the minimum standards of the
21 Alabama Peace Officers' Minimum Standards and
22 Training Commission.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to the Board of Nursing; to amend Section
2 34-21-2, Code of Alabama 1975, to grant investigators of the
3 board the authority to exercise the power of peace officers
4 and to require investigators to comply with the minimum
5 standards for peace officers, and to amend Section 20-2-90,
6 Code of Alabama 1975, which grants certain investigators of
7 certain health related boards the power to enforce the
8 controlled substance laws, to include investigators of the
9 Board of Nursing.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 20-2-90 and 34-21-2, Code of
12 Alabama 1975, are amended to read as follows:

13 "§20-2-90.

14 "(a) The State Board of Pharmacy and its drug
15 inspectors shall enforce all provisions of this chapter. The
16 agents and officers of ~~this~~ the Department of Public Safety,
17 the drug and narcotic agents and inspectors of the State Board
18 of Health, the investigators of the State Board of Medical
19 Examiners, the investigators of the Board of Dental Examiners,
20 the investigators of the Board of Nursing, and all peace
21 officers of the state and all prosecuting attorneys are also
22 charged with the enforcement of this chapter. The agents and
23 officers of the Department of Public Safety, the drug
24 inspectors of the State Board of Pharmacy, the investigators
25 of the State Board of Medical Examiners, the investigators of
26 the Board of Dental Examiners, the investigators of the Board
27 of Nursing, and the drug and narcotic agents and inspectors

1 of the State Board of Health shall have the powers of peace
2 officers in the performance of their duties to:

3 "(1) Make arrests without warrant for any offense
4 under this chapter committed in their presence, or if they
5 have probable cause to believe that the person to be arrested
6 has committed or is committing a violation of this chapter
7 which may constitute a felony.

8 "(2) Make seizures of property pursuant to this
9 chapter.

10 "(3) Carry firearms in the performance of their
11 official duties.

12 "(b) In addition to the requirements of subsection
13 (a), drug inspectors of the State Board of Pharmacy shall,
14 beginning October 1, 1993, meet the minimum standards required
15 of peace officers in this state.

16 "§34-21-2.

17 "(a) There is created the Board of Nursing, which
18 shall be composed of 13 members to be appointed and have the
19 duties and powers enumerated in this section. The membership
20 of the board shall be inclusive and reflect the racial,
21 gender, geographic, urban/rural, and economic diversity of the
22 state. In order to insure continuity of administration, the
23 nine board members provided for by Section 3 of Act 427,
24 Regular Session 1975, shall continue to serve to the
25 completion of the term for which they are serving. The
26 Governor, within 60 days of January 1, 1984, shall appoint a
27 tenth member who shall be a licensed practical nurse for a

1 term of four years from a list of nominees furnished him or
2 her by the Alabama Federation of Licensed Practical Nurses,
3 Incorporated. As the terms of all board members expire, their
4 successors shall be appointed for terms of four years each.
5 Vacancies in unexpired terms shall be filled in the same
6 manner as original appointments are made. No member shall be
7 appointed to more than two consecutive terms of four years
8 each. Eight members of the board shall be licensed
9 professional nurses, and four members of the board shall be
10 licensed practical nurses.

11 "(b) (1) The Governor shall appoint the members of
12 the board who are licensed professional nurses from a list of
13 nominees who are selected by the Board of Nursing Nomination
14 Committee and furnished to the Governor by the Alabama State
15 Nurses' Association, and such list, when furnished, shall
16 contain at least twice the number of nominees as there are
17 appointments to be made or vacancies to be filled. The Alabama
18 State Nurses' Association, on or before December 1 of each
19 year, or at such other times as necessary, shall furnish the
20 Governor with a list of licensed professional nurses qualified
21 for appointment to the board. In the nominating and appointing
22 process, due care shall be taken to ensure the maintenance of
23 qualified representation from the fields of nursing education,
24 nursing administration, clinical nursing, and advanced
25 practice nursing.

26 "(2) The Governor shall appoint two of the members
27 of the board who are to be licensed practical nurses from a

1 list of nominees furnished him or her by the Board of
2 Directors of the Licensed Practical Nurses Association of
3 Alabama, and such list, when furnished, shall contain at least
4 twice the number of nominees for the vacancies to be filled.
5 The Board of Directors of the Licensed Practical Nurses
6 Association of Alabama, on or before December 1 of each year
7 in which the term of office of a board member or a nominee of
8 the Board of Directors shall expire, or at such other time as
9 necessary, shall furnish the Governor with such list of
10 licensed practical nurses qualified for appointment to the
11 board.

12 "(3) The Governor shall appoint two members on the
13 board who are to be licensed practical nurses from a list of
14 nominees furnished him or her by the Board of Directors of the
15 Alabama Federation of Licensed Practical Nurses, Incorporated,
16 and such list, when furnished, shall contain at least twice
17 the number of nominees for the vacancies to be filled. The
18 Board of Directors of the Alabama Federation of Licensed
19 Practical Nurses, Incorporated, on or before December 1 of
20 each year in which the term of office of the board member
21 filled by the nominee of such board of directors shall expire,
22 or at such other times as necessary, shall furnish the
23 Governor with a list of licensed practical nurses qualified
24 for appointment to the board.

25 "(c) The Governor may remove any member from the
26 board for neglect of duty of the board, incompetency, or
27 unprofessional or dishonorable conduct.

1 "(d) Each person appointed to the board as a
2 licensed professional nurse shall be a citizen of the United
3 States, a resident of the State of Alabama, and have all of
4 these additional qualifications:

5 "(1) Be a graduate of a state-approved educational
6 program for the preparation of practitioners of professional
7 nursing.

8 "(2) Be a currently licensed professional nurse in
9 Alabama.

10 "(3) Have a minimum of five years' successful
11 nursing experience in an administrative, teaching, clinical
12 capacity, or advanced practice.

13 "(4) Be actively engaged in professional nursing in
14 this state immediately preceding and during appointment.

15 "(e) Each person appointed to the board as a
16 licensed practical nurse shall be a citizen of the United
17 States, a resident of the State of Alabama, and have all of
18 these additional qualifications:

19 "(1) Hold a diploma from an accredited high school
20 or its equivalent.

21 "(2) Be a graduate of a state-approved vocational
22 educational program for the preparation of practitioners of
23 licensed practical nursing.

24 "(3) Be a currently licensed practical nurse in
25 Alabama.

26 "(4) Have a minimum of five years' successful
27 nursing experience.

1 "(5) Be actively engaged in licensed practical
2 nursing in this state immediately preceding and during
3 appointment.

4 "(f) There shall be one member of the board who is a
5 consumer and who is not a member of any of the health care
6 professions. The consumer member shall be appointed by the
7 Governor effective January 1, 1998, and shall serve for a term
8 of four years. His or her successor shall be appointed in a
9 like manner at the expiration of each term or upon a vacancy
10 for the remainder of an unexpired term of office. The consumer
11 member of the board shall have, presently or formerly, no
12 direct financial interest in any health care facility,
13 profession, agency, or insurer, or be or have been a health
14 care worker.

15 "(g) There shall be two advanced practice nurse
16 positions to be filled effective January 1, 1998, in the same
17 manner as all other professional nurse positions. One advanced
18 practice nurse position shall be served for an initial
19 five-year term and successors shall serve four-year terms. The
20 remaining member appointed to an advance practice nurse
21 position shall serve an initial four-year term and successors
22 shall serve four-year terms.

23 "(h) All members of the board shall enjoy immunity
24 from individual civil liability while acting within the scope
25 of their duties as board members.

26 "(i) The board shall have the following powers and
27 perform the following duties: It shall meet at least once a

1 year and shall, at its organizational meeting and at its
2 annual meetings thereafter, elect from its members a
3 president, a vice-president, and a secretary. It may hold such
4 other and additional meetings during any year as it deems
5 necessary for the transaction of business. A majority of the
6 board, including one officer, shall constitute a quorum at any
7 meeting.

8 "(j) The board may:

9 "(1) Adopt and, from time to time, revise such rules
10 and regulations, not inconsistent with law, as may be
11 necessary to carry out this chapter.

12 "(2) Prescribe standards and approve curricula for
13 nursing educational programs preparing persons for licensure
14 under this chapter.

15 "(3) Provide for surveys and evaluations of such
16 programs at such times as it may deem necessary.

17 "(4) Approve such nursing educational programs as
18 meet the requirements of this chapter and the board. Nothing
19 in this chapter shall be construed to diminish the power of
20 the State Board of Education or other constitutionally or
21 legislatively established state agencies to govern the schools
22 under their respective jurisdictions.

23 "(5) Deny or withdraw approval from educational
24 programs for failure to meet prescribed standards. Withdrawal
25 of approval shall be effected only after a hearing in
26 accordance with board rules and regulations.

1 "(6) Examine, license, and renew the licenses of
2 duly qualified applicants and require employers to submit
3 listings of personnel covered by this chapter to the board
4 upon request.

5 "(7) Conduct investigations, hearings, and
6 proceedings concerning alleged violations of this section or
7 of the rules and regulations of the board.

8 "(8) Have the power to issue subpoenas, compel the
9 attendance of witnesses, and administer oaths to persons
10 giving testimony at hearings.

11 "(9) Cause the prosecution of all persons violating
12 this chapter and incur such necessary expenses therefor.

13 "(10) Keep a public record of all of its
14 proceedings.

15 "(11) Keep a register of all licensees.

16 "(12) Make an annual report to the Governor.

17 "(13) Appoint and employ a qualified person, not
18 subject to the state Merit System, who shall not be a member
19 of the board, to serve as executive officer.

20 "(14) Define the duties and fix the compensation for
21 the executive officer.

22 "(15) Employ such other persons as may be necessary
23 to carry on the work of the board and provide for appropriate
24 bonding of employees. Regular employees of the board shall be
25 employed subject to the state Merit System in effect on
26 January 1, 1966, or at the time of employment.

1 "(16) Employ consultants, specialists, counsel, or
2 other specially qualified persons under contract or on a
3 part-time basis to assist it in administering this chapter and
4 without regard to the state Merit System in effect on or after
5 January 1, 1966, and pay for the services of such persons.

6 "(17) Accept gifts and grants upon terms and
7 conditions imposed by it through official resolutions.

8 "(18) Perform such other duties, not inconsistent
9 with law, as required by this chapter to foster and improve
10 nursing and the regulation thereof and the public health of
11 this state.

12 "(19) Expend funds of the board in exercising its
13 powers and duties and in administering this chapter.

14 "(20) Determine and collect reasonable fees.

15 "(21) Adopt standards for registered and practical
16 nursing practice and for continued competency of licensees.

17 "(22) Join organizations that develop and regulate
18 the national nursing licensure examinations and promote the
19 improvement of the legal standards of the practice of nursing
20 for the protection of the public health, safety, and welfare.

21 "(k) The executive officer employed by the board
22 shall be a citizen of the United States, a person of the
23 highest integrity, and possess these additional
24 qualifications: Be a licensed professional nurse in Alabama or
25 eligible for licensure, be a graduate of a professional
26 nursing program approved by the state in which the program was
27 completed, hold a master's degree, and have had a varied

1 experience in nursing, including at least five years'
2 experience in an administrative or teaching capacity.

3 "(l) The executive officer shall be bonded for the
4 faithful performance of the duties of the office in the sum of
5 not less than five thousand dollars (\$5,000), and the premium
6 of the bond shall be paid out of the funds of the board.

7 "(m) Each member of the board shall receive the same
8 per diem and travel allowance as is paid by law to state
9 employees for each day's attendance at the board meetings
10 incurred in the discharge of his or her duties as a board
11 member in addition to any daily compensation or allowance, if
12 any, as may be provided by the board, in such amount as may be
13 determined by the board. Any member of the board engaged in
14 duties under the direction of the board shall receive the per
15 diem and travel expenses and daily compensation or allowance
16 authorized by the board.

17 "(n) Nothing in this chapter shall limit the rights
18 of affected parties to appeal decisions of the board with
19 regard to rules and regulations promulgated pursuant to this
20 chapter.

21 "(o) The investigators employed by the board shall
22 have the power of peace officers, including the power of
23 arrest and the power to inspect documents, to enforce any laws
24 involving an alleged violation of the Nurse Practice Act,
25 including any violation involving drugs or controlled
26 substances, and shall comply with the Alabama Peace Officers'
27 Minimum Standards and Training Act. The officers shall not be

1 entitled to overtime compensation pursuant to Sections 36-21-4
2 and 36-21-5, or to compensation pursuant to the requirements
3 of Section 36-21-13."

4 Section 2. This act shall become effective
5 immediately upon its passage and approval by the Governor, or
6 its otherwise becoming law.