

HOUSE BILL 269

J2

EMERGENCY BILL

8lr2058

By: **Delegate Nathan-Pulliam**

Introduced and read first time: January 23, 2008

Assigned to: Health and Government Operations

Committee Report: Favorable with amendments

House action: Adopted

Read second time: February 27, 2008

CHAPTER _____

1 AN ACT concerning

2 **State Board of Nursing – Powers and Duties – Licensing, Certification, and**
3 **Regulation**

4 FOR the purpose of authorizing the State Board of Nursing to accept a certain
5 alternate method of criminal history records check under certain circumstances;
6 providing that certain applicants may only be issued inactive licenses until the
7 completion of a certain course or program; authorizing the Board to grant
8 certain extensions of certain licenses and certificates under certain
9 circumstances; altering the date on which a certain license expires; altering the
10 date on which the Board shall begin a process for requiring criminal history
11 records checks; altering the information to be considered by the Board on
12 receipt of criminal history record information; altering the procedures for the
13 expiration of a temporary license or temporary practice letter; provided that a
14 temporary license may be extended for a certain time period under certain
15 circumstances; authorizing the deputy director to authorize the Board to issue
16 certain subpoenas and administer certain oaths under certain circumstances;
17 requiring the Board to adopt regulations establishing categories of skilled
18 nursing assistants in licensed developmental disabilities administration group
19 homes; repealing the requirement that the Board adopt regulations establishing
20 categories of skilled nursing assistants in licensed developmental disabilities
21 administration alternate living units; limiting the time period in which a
22 medication technician graduate may practice, without certification by the
23 Board; making certain technical changes; making this Act an emergency
24 measure; and generally relating to the regulation and licensing of nurses,
25 nursing assistants, and medication technicians by the State Board of Nursing.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
2 Article – Health Occupations
3 Section 8–303, 8–305, 8–308, 8–312, 8–315, 8–317, 8–6A–05(a)(2), 8–6A–07,
4 8–6A–08, and 8–6A–11
5 Annotated Code of Maryland
6 (2005 Replacement Volume and 2007 Supplement)

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

9 **Article – Health Occupations**

10 8–303.

11 (a) In this section, “Central Repository” means the Criminal Justice
12 Information System Central Repository of the Department of Public Safety and
13 Correctional Services.

14 (b) As part of an application to the Central Repository for a State and
15 national criminal history records check, an applicant shall submit to the Central
16 Repository:

17 (1) Two complete sets of legible fingerprints taken on forms approved
18 by the Director of the Central Repository and the Director of the Federal Bureau of
19 Investigation;

20 (2) The fee authorized under § 10–221(b)(7) of the Criminal Procedure
21 Article for access to State criminal history records; and

22 (3) The processing fee required by the Federal Bureau of Investigation
23 for a national criminal history records check.

24 (c) In accordance with §§ 10–201 through 10–228 of the Criminal Procedure
25 Article, the Central Repository shall forward to the Board and to the applicant the
26 criminal history record information of the applicant.

27 **(D) IF AN APPLICANT HAS MADE TWO OR MORE UNSUCCESSFUL**
28 **ATTEMPTS AT SECURING LEGIBLE FINGERPRINTS, THE BOARD MAY ACCEPT AN**
29 **ALTERNATE METHOD OF CRIMINAL HISTORY RECORDS CHECK AS PERMITTED**
30 **BY THE DIRECTOR OF THE CENTRAL REPOSITORY AND THE DIRECTOR OF THE**
31 **FEDERAL BUREAU OF INVESTIGATION.**

32 [(d)](E) Information obtained from the Central Repository under this
33 section shall be:

34 (1) Confidential and may not be disseminated; and

1 (2) Used only for the licensing purpose authorized by this title.

2 [(e)](F) The subject of a criminal history records check under this section
3 may contest the contents of the printed statement issued by the Central Repository as
4 provided in § 10–223 of the Criminal Procedure Article.

5 8–305.

6 (a) Except as otherwise provided in subsection (b) of this section, an
7 applicant who otherwise qualifies for a license as a registered nurse or as a licensed
8 practical nurse is entitled to be examined for that license as provided in this section.

9 (b) Subject to the hearing provisions of § 8–317 of this subtitle, the Board
10 may deny the right to be examined for a license as a registered nurse or as a licensed
11 practical nurse to any applicant who is found to have violated any provision of § 8–316
12 of this subtitle.

13 (c) The Board shall give examinations to applicants at least once each
14 calendar year at the times and places that the Board determines.

15 (d) The Board shall determine the subjects, scope, form, and passing score
16 for each examination given under this title.

17 (E) AN APPLICANT WHOSE NURSING EDUCATION PROGRAM WAS
18 COMPLETED 5 OR MORE YEARS PRIOR TO PASSING THE LICENSURE
19 EXAMINATION AND WHO HAS NOT PRACTICED FOR AT LEAST 1,000 HOURS IN
20 THE PREVIOUS 5 YEARS MAY ONLY BE ISSUED AN INACTIVE LICENSE UNTIL
21 SUBMISSION TO THE BOARD OF SATISFACTORY EVIDENCE THAT THE APPLICANT
22 HAS SUCCESSFULLY COMPLETED:

23 (1) A NURSING REVIEW COURSE APPROVED BY THE BOARD; OR

24 (2) A PRECEPTORSHIP PROGRAM PROVIDED BY AN EMPLOYER
25 AND APPROVED BY THE BOARD.

26 [(e)](F) (1) Except as provided in paragraph (2) of this subsection, an
27 applicant who fails an examination may retake the examination if the applicant pays
28 the reexamination fee set by the Board for each reexamination.

29 (2) The Board, by rule or regulation, may limit the number of times
30 that an applicant may be reexamined after two failures and may limit the interval of
31 time between reexaminations.

32 8–308.

33 (a) Subject to subsection (c) of this section, the Board shall issue the
34 appropriate license to any applicant who meets the requirements for a license as:

- 1 (1) A registered nurse under this title; and
2 (2) A licensed practical nurse under this title.

3 (b) The Board shall show on each license:

- 4 (1) Any expiration date;
5 (2) The type of license; and
6 (3) Any certification.

7 (c) (1) On receipt of the criminal history record information of an
8 applicant for licensure or certification forwarded to the Board in accordance with §
9 8–303 of this subtitle, in determining whether to grant a license or a certificate, the
10 Board shall consider:

- 11 (i) The age at which the crime was committed;
12 (ii) The circumstances surrounding the crime;
13 (iii) The length of time that has passed since the crime;
14 (iv) Subsequent work history;
15 (v) Employment and character references; and
16 (vi) Other evidence that demonstrates [that] **WHETHER** the
17 applicant [does not pose] **POSES** a threat to the public health or safety.

18 (2) (I) [The] **EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF**
19 **THIS PARAGRAPH, THE** Board may not issue a license or a certificate if the criminal
20 history record information required under § 8–303 of this subtitle has not been
21 received.

22 (II) **THE BOARD MAY GRANT A 90–DAY EXTENSION OF A**
23 **TEMPORARY LICENSE PENDING RECEIPT OF CRIMINAL HISTORY RECORD**
24 **INFORMATION.**

25 8–312.

26 (a) A license expires on the [last] **28TH** day of the birth month of the
27 licensee, unless the license is renewed for a 1–year term as provided in this section.

28 (b) At least 1 month before the license expires, the Board shall send to the
29 licensee a renewal notice.

1 (c) Before a license expires, the licensee periodically may renew it for an
2 additional term, if the licensee:

3 (1) Otherwise is entitled to be licensed;

4 (2) Pays to the Board:

5 (i) A renewal fee set by the Board; or

6 (ii) A renewal fee that is set by the Board if the licensee certifies
7 to the Board that the licensee provides professional services only as a volunteer; and

8 (3) Submits to the Board:

9 (i) A renewal application on the form that the Board requires;
10 and

11 (ii) Satisfactory evidence of completion of:

12 1. 1,000 hours of active nursing practice within the
13 5-year period immediately preceding the date of renewal;

14 2. A course of instruction, commonly known as a
15 refresher course, approved by the Board; or

16 3. A preceptorship program provided by an employer
17 and approved by the Board.

18 (d) (1) The Board may grant a 30-day extension, beyond a license's
19 expiration date, to a licensee so that the licensee may renew the license before it
20 expires.

21 (2) **THE BOARD MAY GRANT TWO 90-DAY EXTENSIONS BEYOND A**
22 **LICENSE'S EXPIRATION DATE PENDING RECEIPT OF CRIMINAL HISTORY**
23 **RECORD INFORMATION.**

24 (e) (1) Each licensee shall notify the Board in writing of any change in the
25 name or address of the licensee within 60 days after the change occurred.

26 (2) If a licensee fails to notify the Board within the time required
27 under this subsection, subject to the hearing provisions of § 8-317 of this subtitle, the
28 Board may impose an administrative penalty of \$100.

29 (f) (1) Subject to subsection (g) of this section, the Board shall renew the
30 license of each licensee who meets the requirements of this section.

1 (2) A volunteer's license issued under paragraph (c)(2)(ii) of this
2 section shall be clearly designated as a volunteer's license.

3 (g) (1) (i) Beginning [January 2008] **JULY 2009**, the Board shall
4 begin a process requiring criminal history records checks in accordance with § 8-303 of
5 this subtitle on:

6 1. Selected annual renewal applicants as determined by
7 regulations adopted by the Board; and

8 2. Each former licensee who files for reinstatement
9 under § 8-313 of this subtitle after failing to renew the license for a period of 1 year or
10 more.

11 (ii) An additional criminal history records check shall be
12 performed every 10 years thereafter.

13 (2) On receipt of the criminal history record information of a licensee
14 forwarded to the Board in accordance with § 8-303 of this subtitle, in determining
15 whether to renew a license, the Board shall consider:

16 (i) The age at which the crime was committed;

17 (ii) The circumstances surrounding the crime;

18 (iii) The length of time that has passed since the crime;

19 (iv) Subsequent work history;

20 (v) Employment and character references; and

21 (vi) Other evidence that demonstrates [that] **WHETHER** the
22 licensee [does not pose] **POSES** a threat to the public health or safety.

23 (3) The Board may not renew a license if the criminal history record
24 information required under § 8-303 of this subtitle has not been received.

25 8-315.

26 (a) The Board may issue a temporary license to any applicant who:

27 (1) Submits to a criminal history records check in accordance with §
28 8-303 of this subtitle;

29 (2) Is licensed by any other state;

30 (3) Submits to the Board:

- 1 (i) An application on the form required by the Board;
- 2 (ii) Written, verified evidence that the requirement of item (1) of
3 this subsection is being met; and
- 4 (iii) Any other document required by the Board; and
- 5 (4) Pays the fee required by the Board.
- 6 (b) (1) A temporary license issued to an individual who is authorized to
7 practice registered nursing in another state authorizes the holder to practice
8 registered nursing in this State while the temporary license is effective.
- 9 (2) A temporary license issued to an individual who is authorized to
10 practice licensed practical nursing in another state authorizes the holder to practice
11 licensed practical nursing in this State while the temporary license is effective.
- 12 (c) (1) The Board may issue a temporary practice letter to a certified
13 nurse practitioner or certified nurse–midwife who:
- 14 (i) Has been issued a temporary license under this subsection
15 and has submitted a written agreement to the Board for formal approval;
- 16 (ii) Is authorized to practice as a registered nurse and has
17 submitted an initial written agreement to the Board for formal approval; or
- 18 (iii) 1. Has had a written agreement approved by the Board;
- 19 2. Is changing practices or locations; and
- 20 3. Has submitted to the Board for formal approval a new
21 written agreement for the new practice or location.
- 22 (2) The Board may not issue a temporary practice letter to a certified
23 nurse practitioner or certified nurse–midwife under paragraph (1) of this subsection
24 unless:
- 25 (i) The State Board of Physicians has received a written
26 agreement submitted to the Board for formal approval of the scope of practice for
27 which the temporary practice letter is requested; and
- 28 (ii) The State Board of Physicians has approved the issuance of
29 the temporary practice letter.
- 30 (3) A temporary practice letter does not:

1 (i) Create any interest, right, or entitlement for the certified
2 nurse practitioner, certified nurse–midwife, or collaborating physician that extends
3 beyond the ending date of the practice letter;

4 (ii) Abrogate any procedures required by statute or regulation
5 for approval of collaboration agreements; or

6 (iii) Establish any fact or any presumption concerning the final
7 approval of a collaboration agreement.

8 (d) (1) **[A] EXCEPT AS PROVIDED IN THIS SUBTITLE, A** temporary
9 license and temporary practice letter may not be renewed.

10 (2) Unless the Board **SUSPENDS OR** revokes a temporary license or
11 temporary practice letter, each temporary license or temporary practice letter expires
12 90 days after the date of issue.

13 **(3) A TEMPORARY LICENSE MAY BE EXTENDED UP TO AN**
14 **ADDITIONAL 90 DAYS IF THE APPLICANT IS AWAITING THE COMPLETION OF**
15 **CRIMINAL HISTORY RECORD INFORMATION.**

16 (e) The Board shall revoke a temporary license or temporary certificate if the
17 criminal history record information forwarded to the Board in accordance with § 8–303
18 of this subtitle reveals that the applicant, certificate holder, or licensee has been
19 convicted or pled guilty or nolo contendere to a felony or to a crime involving moral
20 turpitude, whether or not any appeal or other proceeding is pending to have the
21 conviction or plea set aside.

22 8–317.

23 (a) Except as otherwise provided in the Administrative Procedure Act and in
24 subsection (g) of this section, before the Board takes any action under § 8–312[,] **OR** §
25 8–316[,] **OF THIS SUBTITLE OR** § 8–404[,] or § 8–6A–10 of this title, it shall give the
26 person against whom the action is contemplated an opportunity for a hearing before
27 the Board.

28 (b) The Board shall give notice and hold the hearing in accordance with the
29 Administrative Procedure Act.

30 (c) The hearing notice to be given to the person shall be sent by certified
31 mail, return receipt requested, bearing a postmark from the United States Postal
32 Service, to the last known address of the person at least 30 days before the hearing.

33 (d) The person may be represented at the hearing by counsel.

1 (e) If after due notice the individual against whom the action is
2 contemplated fails or refuses to appear, nevertheless the Board may hear and
3 determine the matter.

4 (f) (1) Over the signature of the [president or] **PRESIDENT**, the executive
5 director, **OR THE DEPUTY DIRECTOR AS AUTHORIZED BY THE EXECUTIVE**
6 **DIRECTOR** of the Board, the Board may issue subpoenas and administer oaths in
7 connection with any investigation under this title and any hearings or proceedings
8 before it.

9 (2) If a person, without lawful excuse, disobeys a subpoena from the
10 Board or an order by the Board to take an oath, testify, or answer questions, on
11 petition of the Board a court of competent jurisdiction may compel compliance with the
12 subpoena and hold the individual in contempt of court.

13 (g) The Board may immediately suspend the license of a registered nurse or
14 licensed practical nurse who is expelled from the rehabilitation program under §
15 8–208 of this title for noncompliance with the nurse’s agreement if:

16 (1) Prior to suspending the license, the Board provides the nurse with
17 an opportunity to show cause by written communication or nontestimonial
18 presentation as to why the suspension should not occur; and

19 (2) The Board provides the nurse with an opportunity for a hearing,
20 which:

21 (i) Shall occur within 30 days of written request by the nurse;
22 and

23 (ii) Shall impose on the licensee the burden of proving by a
24 preponderance of the evidence that the licensee is not addicted to drugs or alcohol.

25 (h) (1) After the Board conducts an investigation under this title, the
26 Board may issue an advisory letter to the licensee or certificate holder.

27 (2) The Board may disclose an advisory letter issued under this
28 subsection to the public.

29 (3) The issuance of an advisory letter under this subsection may not:

30 (i) Be considered a disciplinary action under §§ 8–316 and
31 8–6A–10 of this title; and

32 (ii) Be reported to any licensing entity, employer, or insurance
33 company as a disciplinary action.

34 8–6A–05.

1 (a) The Board shall adopt regulations establishing:

2 (2) Categories of skilled nursing assistants in the following settings:

3 (i) Licensed nursing homes; and

4 (ii) Licensed developmental disabilities administration
5 [alternative living units] **GROUP HOMES**;

6 8-6A-07.

7 (a) Subject to subsection (g) of this section, the Board shall issue a certificate
8 to any applicant who meets the requirements of this subtitle.

9 (b) The certificate of an individual who has met the requirements for a
10 certified nursing assistant shall include the title “certified nursing assistant”.

11 (c) The certificate of an individual who routinely performs nursing tasks
12 delegated by a registered nurse or licensed practical nurse for compensation and has
13 also completed a Board-approved course in medication administration shall also
14 include the title “certified medicine aide”.

15 (d) The certificate of an individual who has met the requirements for a
16 certified medication technician shall include the title “certified medication technician”.

17 (e) The Board may issue a certificate to replace a lost, destroyed, or
18 mutilated certificate, if the certificate holder pays the certificate replacement fee set
19 by the Board.

20 (f) (1) The Board may issue a temporary practice certificate to an
21 applicant who:

22 (i) Has met the appropriate certification requirements of this
23 subtitle to the satisfaction of the Board;

24 (ii) Does not have a criminal record and has not been the subject
25 of a health professional disciplinary action in this State or another jurisdiction; and

26 (iii) Does not have a criminal charge or a health professional
27 disciplinary action pending in this State or another jurisdiction.

28 (2) Unless the Board **SUSPENDS OR** revokes a temporary practice
29 certificate, the temporary practice certificate expires [60] **90** days after issuance.

1 **(3) A TEMPORARY PRACTICE CERTIFICATE MAY BE EXTENDED UP**
2 **TO AN ADDITIONAL 90 DAYS IF THE APPLICANT IS AWAITING THE COMPLETION**
3 **OF CRIMINAL HISTORY RECORD INFORMATION.**

4 **(G) A MEDICATION TECHNICIAN GRADUATE MAY PRACTICE FOR NO**
5 **MORE THAN ~~60~~ 90 DAYS FROM THE DATE OF COMPLETION OF A MEDICATION**
6 **TECHNICIAN TRAINING PROGRAM WITHOUT CERTIFICATION BY THE BOARD.**

7 **[(g)](H) (1)** On receipt of the criminal history record information of an
8 applicant for certification as a certified nursing assistant forwarded to the Board in
9 accordance with § 8–303 of this title, in determining whether to grant a certificate, the
10 Board shall consider:

- 11 (i) The age at which the crime was committed;
- 12 (ii) The circumstances surrounding the crime;
- 13 (iii) The length of time that has passed since the crime;
- 14 (iv) Subsequent work history;
- 15 (v) Employment and character references; and
- 16 (vi) Other evidence that demonstrates [that] **WHETHER** the
17 applicant [does not pose] **POSES** a threat to the public health or safety.

18 (2) The Board may not issue a certificate if the criminal history record
19 information required under § 8–303 of this title has not been received.

20 8–6A–08.

21 (a) A certificate expires on the 28th day of the birth month of the nursing
22 assistant or medication technician, unless the certificate is renewed for a 2–year term
23 as provided in this section.

24 (b) At least 3 months before the certificate expires, the Board shall send to
25 the nursing assistant or medication technician a renewal notice that states:

- 26 (1) The date on which the current certificate expires;
- 27 (2) The date by which the renewal application must be received by the
28 Board for the renewal to be issued and mailed before the certificate expires; and
- 29 (3) The amount of the renewal fee.

30 (c) Before a certificate expires, a nursing assistant periodically may renew it
31 for an additional term, if the certificate holder:

- 1 (1) Otherwise is entitled to be certified;
- 2 (2) Submits to the Board a renewal application on the form that the
3 Board requires;
- 4 (3) Pays to the Board a renewal fee set by the Board; and
- 5 (4) Provides satisfactory evidence of completion of:
- 6 (i) 16 hours of active nursing assistant practice within the
7 2-year period immediately preceding the date of renewal; or
- 8 (ii) An approved nursing assistant training program.
- 9 (d) In addition to the requirements in subsection (c)(1), (2), and (3) of this
10 section, a skilled nursing assistant shall:
- 11 (1) Provide satisfactory evidence of completion of 1,000 hours of
12 practice as a skilled nursing assistant within the individual's specific category of
13 nursing assistant, in the 2-year period preceding the date of renewal; and
- 14 (2) Successfully complete a Board-approved refresher course within
15 the individual's specific category of nursing assistant.
- 16 (e) In addition to the requirements in subsection (c)(1), (2), and (3) of this
17 section, a certified medicine aide shall:
- 18 (1) Provide satisfactory evidence of completion of 100 hours of practice
19 as a certified medicine aide in the 2-year period preceding the date of renewal; and
- 20 (2) Successfully complete a Board-approved medicine aide continuing
21 education program.
- 22 (f) Before a certificate expires, a medication technician periodically may
23 renew it for an additional term, if the certificate holder:
- 24 (1) Otherwise is entitled to be certified;
- 25 (2) Submits to the Board a renewal application on the form that the
26 Board requires;
- 27 (3) Pays to the Board a renewal fee set by the Board;
- 28 (4) Every 2 years, provides satisfactory evidence of completion of a
29 Board-approved clinical refresher course; and

1 (5) Provides satisfactory evidence of completion of 100 hours of
2 practice as a certified medication technician within the 2-year period preceding the
3 date of renewal.

4 (g) (1) The Board may grant a 30-day extension, beyond a certificate's
5 expiration date, to a certificate holder so that the certificate holder may renew the
6 certificate before it expires.

7 **(2) THE BOARD MAY GRANT TWO 90-DAY EXTENSIONS BEYOND A**
8 **CERTIFICATE'S EXPIRATION DATE PENDING RECEIPT OF CRIMINAL HISTORY**
9 **RECORD INFORMATION.**

10 (h) The Board shall reinstate the certificate of a former certificate holder who
11 has failed to renew the certificate for any reason if the former certificate holder meets
12 the applicable renewal requirements of subsections (c) through (f) and (l)(1)(i)2 of this
13 section.

14 (i) Subject to subsection (j) of this section, the Board shall renew the
15 certificate of each nursing assistant or medication technician who meets the
16 requirements of this section.

17 (j) (1) Within 30 days after a change has occurred, each certificate holder
18 shall notify the Board in writing of any change in a name or address.

19 (2) If the certificate holder fails to notify the Board within the time
20 required under this subsection, the Board may impose an administrative penalty of
21 \$25 on the certificate holder.

22 (k) The Board shall pay any penalty collected under this subsection to the
23 General Fund of the State.

24 (l) (1) (i) Beginning [January 2008] **JULY 2009**, the Board shall
25 begin a process requiring criminal history records checks in accordance with § 8-303 of
26 this title on:

27 1. Selected applicants for certification as a certified
28 nursing assistant who renew their certificates every 2 years as determined by
29 regulations adopted by the Board; and

30 2. Each former certified nursing assistant who files for
31 reinstatement under subsection (h) of this section after failing to renew the license for
32 a period of 1 year or more.

33 (ii) An additional criminal history records check shall be
34 performed every 10 years thereafter.

1 (2) On receipt of the criminal history record information of a
2 certificate holder forwarded to the Board in accordance with § 8–303 of this title, in
3 determining whether to renew the certificate, the Board shall consider:

4 (i) The age at which the crime was committed;

5 (ii) The circumstances surrounding the crime;

6 (iii) The length of time that has passed since the crime;

7 (iv) Subsequent work history;

8 (v) Employment and character references; and

9 (vi) Other evidence that demonstrates [that] **WHETHER** the
10 certificate holder [does not pose] **POSES** a threat to the public health or safety.

11 (3) The Board may not renew a certificate if the criminal history
12 record information required under § 8–303 of this title has not been received.

13 8–6A–11.

14 Any person aggrieved by a final decision of the Board under [§ 8–6A–12]
15 § **8–6A–10** of this subtitle may only take a direct judicial appeal as allowed by the
16 Administrative Procedure Act.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act is an emergency
18 measure, is necessary for the immediate preservation of the public health or safety,
19 has been passed by a yea and nay vote supported by three–fifths of all the members
20 elected to each of the two Houses of the General Assembly, and shall take effect from
21 the date it is enacted.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.