

FIRST REGULAR SESSION

HOUSE BILL NO. 988

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BRANDOM (Sponsor) AND TILLEY (Co-sponsor).

Read 1st time February 26, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

2444L.01I

AN ACT

To repeal sections 335.016, 335.066, 335.068, 335.076, 335.097, 383.130, and 383.133, RSMo, and to enact in lieu thereof seven new sections relating to professional licensing of nurses.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 335.016, 335.066, 335.068, 335.076, 335.097, 383.130, and
2 383.133, RSMo, are repealed and seven new sections enacted in lieu thereof, to be known as
3 sections 335.016, 335.066, 335.068, 335.076, 335.097, 383.130, and 383.133, to read as follows:

335.016. As used in this chapter, unless the context clearly requires otherwise, the
2 following words and terms mean:

3 (1) "Accredited", the official authorization or status granted by an agency for a program
4 through a voluntary process;

5 (2) "Advanced practice nurse", a nurse who has had education beyond the basic nursing
6 education and is certified by a nationally recognized professional organization as having a
7 nursing specialty, or who meets criteria for advanced practice nurses established by the board of
8 nursing. The board of nursing may promulgate rules specifying which professional nursing
9 organization certifications are to be recognized as advanced practice nurses, and may set
10 standards for education, training and experience required for those without such specialty
11 certification to become advanced practice nurses. Advanced practice nurses and only such
12 individuals may use the title "Advanced Practice Registered Nurse" and the abbreviation
13 "APRN";

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

- 14 (3) "Approval", official recognition of nursing education programs which meet standards
15 established by the board of nursing;
- 16 (4) "Board" or "state board", the state board of nursing;
- 17 (5) "Executive director", a qualified individual employed by the board as executive
18 secretary or otherwise to administer the provisions of this chapter under the board's direction.
19 Such person employed as executive director shall not be a member of the board;
- 20 (6) "Inactive nurse", as defined by rule pursuant to section 335.061;
- 21 (7) **"Lapsed license status", as defined by rule under section 335.061;**
- 22 (8) [A] "Licensed practical nurse" or "practical nurse", a person licensed pursuant to the
23 provisions of this chapter to engage in the practice of practical nursing;
- 24 [(8)] (9) "Licensure", the issuing of a license to practice professional or practical nursing
25 to candidates who have met the specified requirements and the recording of the names of those
26 persons as holders of a license to practice professional or practical nursing;
- 27 [(9)] (10) "Practical nursing", the performance for compensation of selected acts for the
28 promotion of health and in the care of persons who are ill, injured, or experiencing alterations
29 in normal health processes. Such performance requires substantial specialized skill, judgment
30 and knowledge. All such nursing care shall be given under the direction of a person licensed by
31 a state regulatory board to prescribe medications and treatments or under the direction of a
32 registered professional nurse. For the purposes of this chapter, the term "direction" shall mean
33 guidance or supervision provided by a person licensed by a state regulatory board to prescribe
34 medications and treatments or a registered professional nurse, including, but not limited to, oral,
35 written, or otherwise communicated orders or directives for patient care. When practical nursing
36 care is delivered pursuant to the direction of a person licensed by a state regulatory board to
37 prescribe medications and treatments or under the direction of a registered professional nurse,
38 such care may be delivered by a licensed practical nurse without direct physical oversight;
- 39 [(10)] (11) "Professional nursing", the performance for compensation of any act which
40 requires substantial specialized education, judgment and skill based on knowledge and
41 application of principles derived from the biological, physical, social and nursing sciences,
42 including, but not limited to:
- 43 (a) Responsibility for the teaching of health care and the prevention of illness to the
44 patient and his or her family;
- 45 (b) Assessment, nursing diagnosis, nursing care, and counsel of persons who are ill,
46 injured or experiencing alterations in normal health processes;
- 47 (c) The administration of medications and treatments as prescribed by a person licensed
48 by a state regulatory board to prescribe medications and treatments;

49 (d) The coordination and assistance in the delivery of a plan of health care with all
50 members of a health team;

51 (e) The teaching and supervision of other persons in the performance of any of the
52 foregoing;

53 [(11)] (12) A "registered professional nurse" or "registered nurse", a person licensed
54 pursuant to the provisions of this chapter to engage in the practice of professional nursing;

55 (13) **"Retired license status", any person licensed in this state under this chapter**
56 **who retires from such practice. Such person shall file with the board an affidavit, on a**
57 **form to be furnished by the board, which states the date on which the licensee retired from**
58 **such practice, an intent to retire from the practice for at least two years, and such other**
59 **facts as tend to verify the retirement as the board may deem necessary; but if the licensee**
60 **thereafter reengages in the practice, the licensee shall renew his or her license with the**
61 **board as provided by this chapter and by rule and regulation.**

335.066. 1. The board may refuse to issue any certificate of registration or authority,
2 permit or license required pursuant to sections 335.011 to 335.096 for one or any combination
3 of causes stated in subsection 2 of this section. The board shall notify the applicant in writing
4 of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint
5 with the administrative hearing commission as provided by chapter 621, RSMo.

6 2. The board may cause a complaint to be filed with the administrative hearing
7 commission as provided by chapter 621, RSMo, against any holder of any certificate of
8 registration or authority, permit or license required by sections 335.011 to 335.096 or any person
9 who has failed to renew or has surrendered his or her certificate of registration or authority,
10 permit or license for any one or any combination of the following causes:

11 (1) Use or unlawful possession of any controlled substance, as defined in chapter 195,
12 RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the
13 work of any profession licensed or regulated by sections 335.011 to 335.096;

14 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty
15 or nolo contendere, in a criminal prosecution pursuant to the laws of any state or of the United
16 States, for any offense reasonably related to the qualifications, functions or duties of any
17 profession licensed or regulated pursuant to sections 335.011 to 335.096, for any offense an
18 essential element of which is fraud, dishonesty or an act of violence, or for any offense involving
19 moral turpitude, whether or not sentence is imposed;

20 (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of
21 registration or authority, permit or license issued pursuant to sections 335.011 to 335.096 or in
22 obtaining permission to take any examination given or required pursuant to sections 335.011 to
23 335.096;

- 24 (4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by
25 fraud, deception or misrepresentation;
- 26 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty
27 in the performance of the functions or duties of any profession licensed or regulated by sections
28 335.011 to 335.096;
- 29 (6) Violation of, or assisting or enabling any person to violate, any provision of sections
30 335.011 to 335.096, or of any lawful rule or regulation adopted pursuant to sections 335.011 to
31 335.096;
- 32 (7) Impersonation of any person holding a certificate of registration or authority, permit
33 or license or allowing any person to use his or her certificate of registration or authority, permit,
34 license or diploma from any school;
- 35 (8) Disciplinary action against the holder of a license or other right to practice any
36 profession regulated by sections 335.011 to 335.096 granted by another state, territory, federal
37 agency or country upon grounds for which revocation or suspension is authorized in this state;
- 38 (9) A person is finally adjudged insane or incompetent by a court of competent
39 jurisdiction;
- 40 (10) Assisting or enabling any person to practice or offer to practice any profession
41 licensed or regulated by sections 335.011 to 335.096 who is not registered and currently eligible
42 to practice pursuant to sections 335.011 to 335.096;
- 43 (11) Issuance of a certificate of registration or authority, permit or license based upon
44 a material mistake of fact;
- 45 (12) Violation of any professional trust or confidence;
- 46 (13) Use of any advertisement or solicitation which is false, misleading or deceptive to
47 the general public or persons to whom the advertisement or solicitation is primarily directed;
- 48 (14) Violation of the drug laws or rules and regulations of this state, any other state or
49 the federal government;
- 50 (15) Placement on an employee disqualification list or other related restriction or finding
51 pertaining to employment within a health-related profession issued by any state or federal
52 government or agency following final disposition by such state or federal government or agency.
- 53 3. After the filing of such complaint, the proceedings shall be conducted in accordance
54 with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing
55 commission that the grounds, provided in subsection 2 of this section, for disciplinary action are
56 met, the board may, singly or in combination, censure or place the person named in the complaint
57 on probation on such terms and conditions as the board deems appropriate for a period not to
58 exceed five years, or may suspend, for a period not to exceed three years, or revoke the license,
59 certificate, or permit.

60 4. **For any hearing before the full board, the board shall cause the notice of the**
61 **hearing to be served upon such licensee in person or by certified mail to the licensee at the**
62 **licensee's last known address. If service cannot be accomplished in person or by certified**
63 **mail, notice by publication as described in subsection 3 of section 506.160, RSMo, shall be**
64 **allowed; any representative of the board is authorized to act as a court or judge would in**
65 **that section; any employee of the board is authorized to act as a clerk would in that section.**

66 5. An individual whose license has been revoked shall wait one year from the date of
67 revocation to apply for relicensure. Relicensure shall be at the discretion of the board after
68 compliance with all the requirements of sections 335.011 to 335.096 relative to the licensing of
69 an applicant for the first time.

70 [5.] 6. The board may notify the proper licensing authority of any other state concerning
71 the final disciplinary action determined by the board on a license in which the person whose
72 license was suspended or revoked was also licensed of the suspension or revocation.

73 [6.] 7. Any person, organization, association or corporation who reports or provides
74 information to the board of nursing pursuant to the provisions of sections 335.011 to 335.259 and
75 who does so in good faith shall not be subject to an action for civil damages as a result thereof.

76 8. **If the board concludes that a nurse has committed an act or is engaging in a**
77 **course of conduct which would be grounds for disciplinary action which constitutes a clear**
78 **and present danger to the public health and safety, the board may file a complaint before**
79 **the administrative hearing commission requesting an expedited hearing and specifying the**
80 **activities which give rise to the danger and the nature of the proposed restriction or**
81 **suspension of the nurse's license. Within fifteen days after service of the complaint on the**
82 **nurse, the administrative hearing commission shall conduct a preliminary hearing to**
83 **determine whether the alleged activities of the nurse appear to constitute a clear and**
84 **present danger to the public health and safety which justify that the nurse's license be**
85 **immediately restricted or suspended. The burden of proving that a nurse is a clear and**
86 **present danger to the public health and safety shall be upon the state board of nursing.**
87 **The administrative hearing commission shall issue its decision immediately after the**
88 **hearing and shall either grant to the board the authority to suspend or restrict the license**
89 **or dismiss the action.**

90 9. **If the administrative hearing commission grants temporary authority to the**
91 **board to restrict or suspend the nurse's license, such temporary authority of the board**
92 **shall become final authority if there is no request by the nurse for a full hearing within**
93 **thirty days of the preliminary hearing. The administrative hearing commission shall, if**
94 **requested by the nurse named in the complaint, set a date to hold a full hearing under the**

95 provisions of chapter 621, RSMo, regarding the activities alleged in the initial complaint
96 filed by the board.

97 **10. If the administrative hearing commission refuses to grant temporary authority**
98 **to the board or restrict or suspend the nurse's license under subsection 8 of this section,**
99 **such dismissal shall not bar the board from initiating a subsequent disciplinary action on**
100 **the same grounds.**

335.068. 1. [If the board finds merit to a complaint by an individual incarcerated or
2 under the care and control of the department of corrections and takes further investigative action,
3 no documentation may appear on file or disciplinary action may be taken in regards to the
4 licensee's license unless the provisions of subsection 2 of section 335.066 have been violated.
5 Any case file documentation that does not result in the board filing an action pursuant to
6 subsection 2 of section 335.066 shall be destroyed within three months after the final case
7 disposition by the board. No notification to any other licensing board in another state or any
8 national registry regarding any investigative action shall be made unless the provisions of
9 subsection 2 of section 335.066 have been violated.

10 2. Upon written request of the nurse subject to a complaint, prior to August 28, 1999,
11 by an individual incarcerated or under the care and control of the department of corrections that
12 did not result in the board filing an action pursuant to subsection 2 of section 335.066, the board
13 and the division of professional registration shall in a timely fashion:

14 (1) Destroy all documentation regarding the complaint;] **If the board determines that**
15 **a complaint does not constitute a violation of the nursing practice act or that the complaint**
16 **is unsubstantiated, then that complaint, and all documentation related to it, shall be**
17 **deemed a sealed record. If the administrative hearing commission or a court of competent**
18 **jurisdiction makes a finding that an action brought by the board does not constitute**
19 **sufficient grounds to discipline the license of a licensee, that complaint, and all**
20 **documentation related to it, shall be deemed a sealed record.**

21 2. For purposes of this section, a "sealed record" shall mean that the complaint to
22 which it refers shall be deemed to never have occurred. The licensee may properly reply
23 that no record exists with respect to such complaint upon any inquiry in the matter. A
24 sealed record shall not be disclosed or reported to any other state agency, other board of
25 nursing, or any other organization without express, written permission of the licensee.

26 3. Upon determination by the board that a complaint is not a violation of the
27 nursing practice act or that the complaint is unsubstantiated, or upon the conclusion of
28 litigation resulting in a finding of insufficient grounds to impose discipline upon a licensee's
29 license, the board and the division of professional registration shall, in a timely fashion:

30 [(2)] (1) Notify any other licensing board in another state or any national registry
31 regarding the board's action if they have been previously notified of the complaint; and

32 [(3)] (2) Send a letter to the licensee that clearly states that the board found the complaint
33 to be unsubstantiated[, that the board has taken the requested action,] **or that litigation resulted**
34 **in a finding that there are insufficient grounds to discipline the licensee's license, that the**
35 **board has sealed all records concerning the complaint,** and notify the licensee of the
36 provisions of subsection [3] 4 of this section.

37 [3.] 4. Any person who has been the subject of an unsubstantiated complaint as provided
38 in subsection 1 [or 2] of this section shall not be required to disclose the existence of such
39 complaint in subsequent applications or representations relating to their nursing professions.

40 5. **Nothing contained in this section shall prevent the board of nursing from**
41 **maintaining such records as to ensure that all complaints received by the board are**
42 **properly investigated and reviewed by the board and the results of that investigation are**
43 **reported to the appropriate parties.**

335.076. 1. Any person who holds a license to practice professional nursing in this state
2 may use the title "Registered Professional Nurse" and the abbreviation "R.N.". No other person
3 [may] **shall** use the title "Registered Professional Nurse" or the abbreviation "R.N.". No other
4 person shall assume any title or use any abbreviation or any other words, letters, signs, or devices
5 to indicate that the person using the same is a registered professional nurse.

6 2. Any person who holds a license to practice practical nursing in this state may use the
7 title "Licensed Practical Nurse" and the abbreviation "L.P.N.". No other person [may] **shall** use
8 the title "Licensed Practical Nurse" or the abbreviation "L.P.N.". No other person shall assume
9 any title or use any abbreviation or any other words, letters, signs, or devices to indicate that the
10 person using the same is a licensed practical nurse.

11 3. **Any person who holds a license or recognition to practice advanced practice**
12 **nursing in this state may use the title "Advanced Practice Registered Nurse", and the**
13 **abbreviation "APRN", and any other title designations appearing on his or her license.**
14 **No other person shall use the title "Advanced Practice Registered Nurse" or the**
15 **abbreviation "APRN". No other person shall assume any title or use any abbreviation or**
16 **any other words, letters, signs, or devices to indicate that the person using the same is an**
17 **advanced practice registered nurse.**

18 4. No person shall practice or offer to practice professional nursing [or] , practical
19 nursing, **or advanced practice nursing** in this state [for compensation] or use any title, sign,
20 abbreviation, card, or device to indicate that such person is a practicing professional nurse [or]
21 , practical nurse, **or advanced practice nurse** unless he **or she** has been duly licensed under the
22 provisions of [sections 335.011 to 335.096] **this chapter.**

23 **5. In the interest of public safety and consumer awareness, it is unlawful for any**
24 **person to use the title "nurse" in reference to himself or herself in any capacity, except**
25 **individuals who are or have been licensed as a registered nurse, licensed practical nurse,**
26 **or advanced practice registered nurse under this chapter.**

 335.097. 1. The president or secretary of the board of nursing may administer oaths,
2 issue subpoenas duces tecum and require production of documents and records. Subpoenas
3 duces tecum shall be served by a person authorized to serve subpoenas of courts of record. In
4 lieu of requiring attendance of a person to produce original documents in response to a subpoena
5 duces tecum, the board may require sworn copies of such documents to be filed with it or
6 delivered to its designated representative.

7 2. The board may enforce its subpoenas duces tecum by applying to a circuit court of
8 Cole County, the county of the investigation, hearing or proceeding, or any county where the
9 person resides or may be found, for an order upon any person who shall fail to comply with a
10 subpoena duces tecum to show cause why such subpoena should not be enforced, which such
11 order and a copy of the application therefor shall be served upon the person in the same manner
12 as a summons in a civil action, and if the circuit court shall, after a hearing, determine that the
13 subpoena duces tecum should be sustained and enforced, such court shall proceed to enforce the
14 subpoena duces tecum in the same manner as though the subpoena duces tecum had been issued
15 in a civil case in the circuit court.

16 **3. Reports made to the board under the mandated reporting requirements as**
17 **defined in chapter 383, RSMo, shall not be deemed a violation of the federal health**
18 **insurance portability and accountability act (HIPAA) and the privacy rules located in the**
19 **act because the Missouri state board of nursing qualifies as a health oversight agency as**
20 **defined in the HIPAA privacy rules.**

 383.130. As used in sections 383.130[,] and 383.133 [and 383.500], the following terms
2 shall mean:

3 (1) "Disciplinary action", any final action taken by the board of trustees or similarly
4 empowered officials of a hospital or ambulatory surgical center, **or owner or operator of a**
5 **temporary nursing staffing agency**, to reprimand, discipline or restrict the practice of a health
6 care professional. [If the health care professional is a physician or surgeon,] Only such
7 reprimands, discipline, or restrictions in response to activities which are also grounds for
8 disciplinary actions [pursuant to section 334.100, RSMo,] **according to the professional**
9 **licensing law for that health care professional** shall be considered disciplinary actions for the
10 purposes of this definition[. If the health care professional is a dentist, only such reprimands,
11 discipline, or restrictions in response to activities which are also grounds for disciplinary actions

12 pursuant to section 332.321, RSMo, shall be considered disciplinary actions for the purposes of
13 this definition];

14 (2) "Health care professional", a physician or surgeon licensed under the provisions of
15 chapter 334, RSMo, a dentist licensed under the provisions of chapter 332, RSMo, or a podiatrist
16 licensed under the provisions of chapter 330, RSMo, or a pharmacist licensed under the
17 provisions of chapter 338, RSMo, a psychologist licensed under the provisions of chapter 337,
18 RSMo, or a nurse licensed under the provisions of chapter 335, RSMo, while acting within their
19 scope of practice;

20 (3) "Hospital", a place devoted primarily to the maintenance and operation of facilities
21 for the diagnosis, treatment or care for not less than twenty-four hours in any week of three or
22 more nonrelated individuals suffering from illness, disease, injury, deformity or other abnormal
23 physical conditions; or a place devoted primarily to provide for not less than twenty-four hours
24 in any week medical or nursing care for three or more nonrelated individuals. The term
25 "hospital" does not include convalescent, nursing, shelter or boarding homes as defined in
26 chapter 198, RSMo;

27 (4) "Licensing authority", the appropriate board or authority which is responsible for the
28 licensing or regulation of the health care professional;

29 (5) **"Temporary nursing staffing agency", any person, firm, partnership, or**
30 **corporation doing business within the state that supplies, on a temporary basis, registered**
31 **nurses, licensed practical nurses to a hospital, nursing home, or other facility requiring the**
32 **services of those persons.**

383.133. 1. [Beginning on January 1, 1987,] The chief executive office **or similarly**
2 **empowered official** of any hospital [or] , ambulatory surgical center, as such [term is] **terms are**
3 defined in [section 197.200] **chapter 197, RSMo, or temporary nursing staffing agency**, shall
4 report to the appropriate health care professional licensing authority any disciplinary action
5 against any health care professional or the voluntary resignation of any health care professional
6 against whom any complaints or reports have been made which might have led to disciplinary
7 action.

8 2. All reports required by this section shall be submitted within fifteen days of the final
9 disciplinary action and shall contain, but need not be limited to, the following information:

10 (1) The name, address and telephone number of the person making the report;

11 (2) The name, address and telephone number of the person who is the subject of the
12 report;

13 (3) A [brief] description of the facts, **including as much detail and information as**
14 **possible**, which gave rise to the issuance of the report, including the dates of occurrence deemed
15 to necessitate the filing of the report;

16 (4) If court action is involved and known to the reporting agent, the identity of the court,
17 including the date of filing and the docket number of the action.

18 3. Upon request, the licensing authority may furnish a report of any disciplinary action
19 received by it under the provisions of this section to any [of the hospitals or ambulatory surgical
20 centers] **entity** required to report **under this section**. Such licensing authority may also furnish,
21 upon request, a report of disciplinary action taken by the licensing authority to any other
22 administrative or law enforcement agency acting within the scope of its statutory authority.

23 4. There shall be no liability on the part of, and no cause of action of any nature shall
24 arise against any health care professional licensing authority or any [hospital or ambulatory
25 surgical center] **entity** required to report under this section, or any of their agents or employees
26 for any action taken in good faith and without malice in carrying out the provisions of this
27 section.

28 5. Neither a report required to be filed under subsection 2 of this section nor the record
29 of any proceeding shall be used against a health care professional in any other administrative or
30 judicial proceeding.

31 6. Violation of any provision of this section is an infraction.

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