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Representatives Deeter, Stewart

Cosponsors: Representatives Schmidt, Somani, Baker, Gross, Abrams, Barhorst, Brennan, Brewer, Dovilla, Fowler Arthur, Ghanbari, Glassburn, Hall, D., Hiner, Hoops, Jarrells, Klopfenstein, Lorenz, Miller, J., Miller, M., Newman, Plummer, Ray, Richardson, Robb Blasdel, Rogers, Sigrist, Troy, White, E., Williams, Willis, Young

Senators Johnson, Huffman, Ingram, Cirino, Craig, Gavarone, Lang, Reineke, Timken

To amend sections 4723.091, 4723.092, and 4723.28	1
of the Revised Code to revise the law governing	2
the Board of Nursing and criminal records check	3
results and to declare an emergency.	4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4723.091, 4723.092, and 4723.28	5
of the Revised Code be amended to read as follows:	6
Sec. 4723.091. (A) An (A) (1) Each of the following shall	7
submit a request to the bureau of criminal identification and	8
investigation for a criminal records check of that individual:	9
<pre>(a) An individual who applies for licensure under section 4723.09 of the Revised Code;</pre>	10 11
(b) An individual who applies for issuance of a	12
certificate under section 4723.651, 4723.75, 4723.85, or 4723.89	13
of the Revised Code;	14

(c) An individual who applies for reactivation of a	15
license, under division (D) of section 4723.24 of the Revised	16
Code, that has been inactive for at least five years; or	17
(d) An individual who applies for reinstatement of a	18
license, under division (D) of section 4723.24 of the Revised	19
Code, that has lapsed for at least five years—shall submit a	20
request to the bureau of criminal identification and	21
investigation for a criminal records check of the applicant;	22
(e) An individual who applies for a volunteer nursing	23
certificate under section 4723.26 of the Revised Code and has	24
been retired from practice for at least ten years;	25
(f) An individual who, as part of an investigation by the	26
board of nursing, is subject to an order by the board under	27
division (F) of section 4723.28 of the Revised Code. The request	28
shall be made in accordance with section 109.572 of the Revised	29
Code.	30
(B) An applicant (2) As part of the request for a criminal	31
records check, the individual requesting a criminal records the	32
check under division (A) of this section—shall also ask—do both	33
of the following:	34
(a) Under the form and methods described in division (C)	35
of section 109.572 of the Revised Code, submit one complete set	36
of fingerprint impressions directly to the superintendent of the	37
bureau of criminal identification and investigation <u>for the</u>	38
<pre>purpose of conducting the check;</pre>	39
(b) Ask the superintendent to request that the federal	40
bureau of investigation <pre>send_provide</pre> to the superintendent any	41
information the federal bureau of investigation has with respect	42
to the applicantindividual.	43

(C)(B) On receipt of all items required for the	44
commencement of a criminal records check pursuant to requested	45
under division (A) of this section, the bureau of criminal	46
identification and investigation shall conduct $\frac{1}{2}$ criminal	47
records check of the applicant individual requesting the check.	48
The superintendent of the bureau of criminal identification and	49
investigation also shall request that the federal bureau of	50
investigation provide to the superintendent any information the	51
federal bureau of investigation has with respect to the	52
individual. On the	53
$\underline{\text{On}}$ completion of the criminal records check, the bureau $\underline{\text{of}}$	54
criminal identification and investigation shall send the results	55
report to the board of nursing the results of the check and any	56
information the federal bureau of investigation provides the	57
<pre>superintendent.</pre>	58
(D) (C) The results of a criminal records check conducted	59
pursuant to a request made under division (A)(B) of this	60
section, any information provided by the federal bureau of	61
investigation as described in that division, and any report	62
containing those results $_{\mathcal{T}}$ or information are not public records	63
for purposes of section 149.43 of the Revised Code and shall not	64
be made available to any person or for any purpose other than	65
the following government entity except as follows:	66
(1) The results may be made available to any person To the	67
individual who is the subject of the check;	68
(2) To the board of nursing for use in determining under	69
section 4723.09, 4723.651, 4723.75, 4723.85, or 4723.89 of the	70
Revised Code whether any of the following about the individual	71
who is the subject of the check:	72

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finding of eligibility for a pretrial diversion or similar

program or for intervention in lieu of a conviction for a

criminal offense unless the refusal is in accordance with

section 9.79 of the Revised Code.

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- Sec. 4723.28. (A) The board of nursing, by a vote of a 106 quorum, may impose one or more of the following sanctions if it 107 finds that a person committed fraud in passing an examination 108 required to obtain a nursing license or dialysis technician 109 certificate issued by the board or to have committed fraud, 110 misrepresentation, or deception in applying for or securing any 111 a nursing license or dialysis technician certificate issued by 112 the board: deny, revoke, suspend, or place restrictions on any 113 nursing license or dialysis technician certificate issued by the 114 board; reprimand or otherwise discipline a holder of a nursing 115 license or dialysis technician certificate; or impose a fine of 116 not more than five hundred dollars per violation. 117
- (B) Except as provided in section 4723.092 of the Revised Code, the board of nursing, by a vote of a quorum, may impose one or more of the following sanctions: deny, revoke, suspend, or place restrictions on any nursing license or dialysis technician certificate issued by the board; reprimand or otherwise discipline a holder of a nursing license or dialysis technician certificate; or impose a fine of not more than five hundred dollars per violation. The sanctions may be imposed for any of the following:
- (1) Denial, revocation, suspension, or restriction of

 authority to engage in a licensed profession or practice a

 health care occupation, including nursing or practice as a

 dialysis technician, for any reason other than a failure to

 renew, in Ohio or another state or jurisdiction;

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- (2) Engaging in the practice of nursing or engaging in

 practice as a dialysis technician, having failed to renew a

 nursing license or dialysis technician certificate issued under

 this chapter, or while a nursing license or dialysis technician

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 certificate is under suspension;

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- (3) Conviction of, a plea of guilty to, a judicial finding
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 of guilt of, a judicial finding of guilt resulting from a plea
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 of no contest to, or a judicial finding of eligibility for a
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 pretrial diversion or similar program or for intervention in
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 lieu of conviction for, a misdemeanor committed in the course of
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 practice;
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- (4) Conviction of, a plea of guilty to, a judicial finding
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 of guilt of, a judicial finding of guilt resulting from a plea
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 of no contest to, or a judicial finding of eligibility for a
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 pretrial diversion or similar program or for intervention in
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 lieu of conviction for, any felony or of any crime involving
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 gross immorality or moral turpitude;
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- (5) Selling, giving away, or administering drugs or 149 therapeutic devices for other than legal and legitimate 150 therapeutic purposes; or conviction of, a plea of guilty to, a 151 judicial finding of guilt of, a judicial finding of guilt 152 resulting from a plea of no contest to, or a judicial finding of 153 eligibility for a pretrial diversion or similar program or for 154 intervention in lieu of conviction for, violating any municipal, 155 state, county, or federal drug law; 156
- (6) Conviction of, a plea of guilty to, a judicial finding

 of guilt of, a judicial finding of guilt resulting from a plea

 of no contest to, or a judicial finding of eligibility for a

 pretrial diversion or similar program or for intervention in

 lieu of conviction for, an act in another jurisdiction that

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would constitute a felony or a crime of moral turpitude in Ohio;	162
(7) Conviction of, a plea of guilty to, a judicial finding	163
of guilt of, a judicial finding of guilt resulting from a plea	164
of no contest to, or a judicial finding of eligibility for a	165
pretrial diversion or similar program or for intervention in	166
lieu of conviction for, an act in the course of practice in	167
another jurisdiction that would constitute a misdemeanor in	168
Ohio;	169
(8) Self-administering or otherwise taking into the body	170
any dangerous drug, as defined in section 4729.01 of the Revised	171
Code, in any way that is not in accordance with a legal, valid	172
prescription issued for that individual, or self-administering	173
or otherwise taking into the body any drug that is a schedule I	174
controlled substance;	175
(9) Habitual or excessive use of controlled substances,	176
other habit-forming drugs, or alcohol or other chemical	177
substances to an extent that impairs the individual's ability to	178
provide safe nursing care or safe dialysis care;	179
(10) Impairment of the ability to practice according to	180
acceptable and prevailing standards of safe nursing care or safe	181
dialysis care because of the use of drugs, alcohol, or other	182
chemical substances;	183
(11) Impairment of the ability to practice according to	184
acceptable and prevailing standards of safe nursing care or safe	185
dialysis care because of a physical or mental disability;	186
(12) Assaulting or causing harm to a patient or depriving	187
a patient of the means to summon assistance;	188
(13) Misappropriation or attempted misappropriation of	189
money or anything of value in the course of practice;	190

(14) Adjudication by a probate court of being mentally ill	191
or mentally incompetent. The board may reinstate the person's	192
nursing license or dialysis technician certificate upon	193
adjudication by a probate court of the person's restoration to	194
competency or upon submission to the board of other proof of	195
competency.	196
(15) The suspension or termination of employment by the	197
United States department of defense or department of veterans	198
affairs for any act that violates or would violate this chapter;	199
(16) Violation of this chapter or any rules adopted under	200
it;	201
(17) Violation of any restrictions placed by the board on	202
a nursing license or dialysis technician certificate;	203
(18) Failure to use universal and standard precautions	204
established by rules adopted under section 4723.07 of the	205
Revised Code;	206
(19) Failure to practice in accordance with acceptable and	207
prevailing standards of safe nursing care or safe dialysis care;	208
(20) In the case of a registered nurse, engaging in	209
activities that exceed the practice of nursing as a registered	210
nurse;	211
(21) In the case of a licensed practical nurse, engaging	212
in activities that exceed the practice of nursing as a licensed	213
<pre>practical nurse;</pre>	214
(22) In the case of a dialysis technician, engaging in	215
activities that exceed those permitted under section 4723.72 of	216
the Revised Code;	217
(23) Aiding and abetting a person in that person's	218

established under section 4723.07 of the Revised Code.

(28) In the case of an advanced practice registered nurse	247
other than a certified registered nurse anesthetist, failure to	248
maintain a standard care arrangement in accordance with section	249
4723.431 of the Revised Code or to practice in accordance with	250
the standard care arrangement;	251
(29) In the case of an advanced practice registered nurse	252
who is designated as a clinical nurse specialist, certified	253
nurse-midwife, or certified nurse practitioner, failure to	254
prescribe drugs and therapeutic devices in accordance with	255
section 4723.481 of the Revised Code;	256
(30) Prescribing any drug or device to perform or induce	257
an abortion, or otherwise performing or inducing an abortion;	258
(31) Failure to establish and maintain professional	259
boundaries with a patient, as specified in rules adopted under	260
section 4723.07 of the Revised Code;	261
(32) Regardless of whether the contact or verbal behavior	262
is consensual, engaging with a patient other than the spouse of	263
the registered nurse, licensed practical nurse, or dialysis	264
technician in any of the following:	265
(a) Sexual contact, as defined in section 2907.01 of the	266
Revised Code;	267
(b) Verbal behavior that is sexually demeaning to the	268
patient or may be reasonably interpreted by the patient as	269
sexually demeaning.	270
(33) Assisting suicide, as defined in section 3795.01 of	271
the Revised Code;	272
(34) Failure to comply with the requirements in section	273
3719.061 of the Revised Code before issuing for a minor a	274

prescription for an opioid analgesic, as defined in section	275
3719.01 of the Revised Code;	276
(35) Failure to comply with section 4723.487 of the	277
Revised Code, unless the state board of pharmacy no longer	278
maintains a drug database pursuant to section 4729.75 of the	279
Revised Code;	280
(36) The revocation, suspension, restriction, reduction,	281
or termination of clinical privileges by the United States	282
department of defense or department of veterans affairs or the	283
termination or suspension of a certificate of registration to	284
prescribe drugs by the drug enforcement administration of the	285
United States department of justice;	286
(37) In the case of an advanced practice registered nurse	287
who is designated as a clinical nurse specialist, certified	288
nurse-midwife, or certified nurse practitioner, failure to	289
comply with the terms of a consult agreement entered into with a	290
pharmacist pursuant to section 4729.39 of the Revised Code;	291
(38) Violation of section 4723.93 of the Revised Code;	292
(39) Failure to cooperate with an investigation conducted	293
by the board under this chapter, including failure to comply	294
with a subpoena or order issued by the board or failure to	295
answer truthfully a question presented by the board in an	296
investigative interview, in an investigative office conference,	297
at a deposition, or in written interrogatories, except that	298
failure to cooperate with an investigation does not constitute	299
grounds for discipline if a court of competent jurisdiction has	300
issued an order that either quashes a subpoena or permits the	301
individual to withhold testimony or evidence at issue.	302
(C) Disciplinary actions taken by the board under	303

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divisions (A) and (B) of this section shall be taken pursuant to	304
an adjudication conducted under Chapter 119. of the Revised	305
Code, except that in lieu of a hearing, the board may enter into	306
a consent agreement with an individual to resolve an allegation	307
of a violation of this chapter or any rule adopted under it. A	308
consent agreement, when ratified by a vote of a quorum, shall	309
constitute the findings and order of the board with respect to	310
the matter addressed in the agreement. If the board refuses to	311
ratify a consent agreement, the admissions and findings	312
contained in the agreement shall be of no effect.	313

(D) The hearings of the board shall be conducted in accordance with Chapter 119. of the Revised Code, the board may appoint a hearing examiner, as provided in section 119.09 of the Revised Code, to conduct any hearing the board is authorized to hold under Chapter 119. of the Revised Code.

In any instance in which the board is required under 319 Chapter 119. of the Revised Code to give notice of an 320 opportunity for a hearing and the applicant, licensee, or 321 certificate holder does not make a timely request for a hearing 322 in accordance with section 119.07 of the Revised Code, the board 323 is not required to hold a hearing, but may adopt, by a vote of a 324 quorum, a final order that contains the board's findings. In the 325 final order, the board may order any of the sanctions listed in 326 division (A) or (B) of this section. 327

(E) If a criminal action is brought against a registered

nurse, licensed practical nurse, or dialysis technician for an

act or crime described in divisions (B)(3) to (7) of this

section and the action is dismissed by the trial court other

than on the merits, the board shall conduct an adjudication to

determine whether the registered nurse, licensed practical

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nurse, or dialysis technician committed the act on which the	334
action was based. If the board determines on the basis of the	335
adjudication that the registered nurse, licensed practical	336
nurse, or dialysis technician committed the act, or if the	337
registered nurse, licensed practical nurse, or dialysis	338
technician fails to participate in the adjudication, the board	339
may take action as though the registered nurse, licensed	340
practical nurse, or dialysis technician had been convicted of	341
the act.	342

If the board takes action on the basis of a conviction, 343 plea, or a judicial finding as described in divisions (B)(3) to 344 (7) of this section that is overturned on appeal, the registered 345 nurse, licensed practical nurse, or dialysis technician may, on 346 exhaustion of the appeal process, petition the board for 347 reconsideration of its action. On receipt of the petition and 348 supporting court documents, the board shall temporarily rescind 349 its action. If the board determines that the decision on appeal 350 was a decision on the merits, it shall permanently rescind its 351 action. If the board determines that the decision on appeal was 352 not a decision on the merits, it shall conduct an adjudication 353 to determine whether the registered nurse, licensed practical 354 nurse, or dialysis technician committed the act on which the 355 original conviction, plea, or judicial finding was based. If the 356 board determines on the basis of the adjudication that the 357 registered nurse, licensed practical nurse, or dialysis 358 technician committed such act, or if the registered nurse, 359 licensed practical nurse, or dialysis technician does not 360 request an adjudication, the board shall reinstate its action; 361 otherwise, the board shall permanently rescind its action. 362

Notwithstanding the provision of division (D)(2) of 363 section 2953.32 or division (F)(1) of section 2953.39 of the 364

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Revised Code specifying that if records pertaining to a criminal 365 case are sealed or expunged under that section the proceedings 366 in the case shall be deemed not to have occurred, sealing or 367 expungement of the following records on which the board has 368 based an action under this section shall have no effect on the 369 board's action or any sanction imposed by the board under this 370 section: records of any conviction, guilty plea, judicial 371 finding of guilt resulting from a plea of no contest, or a 372 judicial finding of eligibility for a pretrial diversion program 373 or intervention in lieu of conviction. 374

The board shall not be required to seal, destroy, redact, or otherwise modify its records to reflect the court's sealing or expungement of conviction records.

- (F) The board may investigate an individual's criminal background in performing its duties under this section. As part of such investigation, the board may order the individual to submit, at the individual's expense, a request to the bureau of criminal identification and investigation for a criminal records check and check of federal bureau of investigation records in accordance with the procedure described in pursuant to section 4723.091 of the Revised Code.
- (G) During the course of an investigation conducted under 386 this section, the board may compel any registered nurse, 387 licensed practical nurse, or dialysis technician or applicant 388 under this chapter to submit to a mental or physical 389 examination, or both, as required by the board and at the 390 expense of the individual, if the board finds reason to believe 391 that the individual under investigation may have a physical or 392 mental impairment that may affect the individual's ability to 393 provide safe nursing or dialysis care. 394

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The board shall not compel an individual who has been 395 referred to the safe haven program as described in sections 396 4723.35 and 4723.351 of the Revised Code to submit to a mental 397 or physical examination. 398

Failure of any individual to submit to a mental or

physical examination when directed constitutes an admission of
the allegations, unless the failure is due to circumstances
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beyond the individual's control, and a default and final order
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may be entered without the taking of testimony or presentation
of evidence.
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If the board finds that an individual is impaired, the 405 board shall require the individual to submit to care, 406 counseling, or treatment approved or designated by the board, as 407 a condition for initial, continued, reinstated, or renewed 408 authority to practice. The individual shall be afforded an 409 opportunity to demonstrate to the board that the individual can 410 begin or resume the individual's occupation in compliance with 411 acceptable and prevailing standards of care under the provisions 412 of the individual's authority to practice. 413

For purposes of this division, any registered nurse, licensed practical nurse, or dialysis technician or applicant under this chapter shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(H) The board shall investigate evidence that appears to
show that any person has violated any provision of this chapter
or any rule of the board. Any person may report to the board any
information the person may have that appears to show a violation
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of any provision of this chapter or rule of the board. In the	425
absence of bad faith, any person who reports such information or	426
who testifies before the board in any adjudication conducted	427
under Chapter 119. of the Revised Code shall not be liable for	428
civil damages as a result of the report or testimony.	429
(I) All of the following apply under this chapter with	430
respect to the confidentiality of information:	431
(1) Information received by the board pursuant to a	432
complaint or an investigation is confidential and not subject to	433
discovery in any civil action, except that the board may	434
disclose information to law enforcement officers and government	435
entities for purposes of an investigation of either a licensed	436
health care professional, including a registered nurse, licensed	437
practical nurse, or dialysis technician, or a person who may	438
have engaged in the unauthorized practice of nursing or dialysis	439
care. No law enforcement officer or government entity with	440
knowledge of any information disclosed by the board pursuant to	441
this division shall divulge the information to any other person	442
or government entity except for the purpose of a government	443
investigation, a prosecution, or an adjudication by a court or	444
government entity.	445
(2) If an investigation requires a review of patient	446
records, the investigation and proceeding shall be conducted in	447
such a manner as to protect patient confidentiality.	448
(3) All adjudications and investigations of the board	449
shall be considered civil actions for the purposes of section	450
2305.252 of the Revised Code.	451

(4) Any board activity that involves continued monitoring

of an individual as part of or following any disciplinary action

taken under this section shall be conducted in a manner that	454
maintains the individual's confidentiality. Information received	455
or maintained by the board with respect to the board's	456
monitoring activities is not subject to discovery in any civil	457
action and is confidential, except that the board may disclose	458
information to law enforcement officers and government entities	459
for purposes of an investigation of a licensee or certificate	460
holder.	461

- (J) Any action taken by the board under this section 462 resulting in a suspension from practice shall be accompanied by 463 a written statement of the conditions under which the person may 464 be reinstated to practice. 465
- 466 (K) When the board refuses to grant a license or certificate to an applicant, revokes a license or certificate, 467 or refuses to reinstate a license or certificate, the board may 468 specify that its action is permanent. An individual subject to 469 permanent action taken by the board is forever ineligible to 470 hold a license or certificate of the type that was refused or 471 revoked and the board shall not accept from the individual an 472 application for reinstatement of the license or certificate or 473 for a new license or certificate. 474
- (L) No unilateral surrender of a nursing license or 475 dialysis technician certificate issued under this chapter shall 476 be effective unless accepted by majority vote of the board. No 477 application for a nursing license or dialysis technician 478 certificate issued under this chapter may be withdrawn without a 479 majority vote of the board. The board's jurisdiction to take 480 disciplinary action under this section is not removed or limited 481 when an individual has a license or certificate classified as 482 inactive or fails to renew a license or certificate. 483

(M) Sanctions shall not be imposed under division (B) (24)	484
of this section against any licensee who waives deductibles and	485
copayments as follows:	486
(1) In compliance with the health benefit plan that	487
expressly allows such a practice. Waiver of the deductibles or	488
copayments shall be made only with the full knowledge and	489
consent of the plan purchaser, payer, and third-party	490
administrator. Documentation of the consent shall be made	491
available to the board upon request.	492
(2) For professional services rendered to any other person	493
licensed pursuant to this chapter to the extent allowed by this	494
chapter and the rules of the board.	495
Section 2. That existing sections 4723.091, 4723.092, and	496
4723.28 of the Revised Code are hereby repealed.	497
Section 3. This act is hereby declared to be an emergency	498
measure necessary for the immediate preservation of the public	499
peace, health, and safety. The reason for such necessity is that	500
enactment into law at the earliest possible time will preserve	501
the confidentiality of Board of Nursing-related criminal records	502
check information and will restrict access to such information	503
only to individuals subject to such checks and to the Board for	504
the purpose of fulfilling specific statutory duties. Therefore,	505

this act shall go into immediate effect.