

As Reported by the House Health Committee

136th General Assembly

Regular Session

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H. B. No. 440

Representatives Deeter, Stewart

Cosponsors: Representatives Schmidt, Somani, Baker, Gross

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

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

Section 1. That sections 4723.091, 4723.092, and 4723.28
of the Revised Code be amended to read as follows:

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Sec. 4723.091. ~~(A) An~~ (A) (1) Each of the following shall
submit a request to the bureau of criminal identification and
investigation for a criminal records check of that individual:

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(a) An individual who applies for licensure under section
4723.09 of the Revised Code;

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(b) An individual who applies for issuance of a
certificate under section 4723.651, 4723.75, 4723.85, or 4723.89
of the Revised Code;

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(c) An individual who applies for reactivation of a
license, under division (D) of section 4723.24 of the Revised
Code, that has been inactive for at least five years; ~~or~~

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(d) An individual who applies for reinstatement of a

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license, under division (D) of section 4723.24 of the Revised Code, that has lapsed for at least five years ~~shall submit a request to the bureau of criminal identification and investigation for a criminal records check of the applicant;~~

(e) An individual who applies for a volunteer nursing certificate under section 4723.26 of the Revised Code and has been retired from practice for at least ten years;

(f) An individual who, as part of an investigation by the board of nursing, is subject to an order by the board under division (F) of section 4723.28 of the Revised Code. The request shall be made in accordance with section 109.572 of the Revised Code.

~~(B) An applicant~~ (2) As part of the request for a criminal records check, the individual requesting a criminal records check under division (A) of this section shall also ask do both of the following:

(a) Under the form and methods described in division (C) of section 109.572 of the Revised Code, submit one complete set of fingerprint impressions directly to the superintendent of the bureau of criminal identification and investigation for the purpose of conducting the check;

(b) Ask the superintendent to request that the federal bureau of investigation send provide to the superintendent any information the federal bureau of investigation has with respect to the applicant individual.

~~(C) (B)~~ On receipt of all items required for the commencement of a criminal records check pursuant to requested under division (A) of this section, the bureau of criminal identification and investigation shall conduct a the criminal

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

On completion of the criminal records check, the bureau 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
superintendent. 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, 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

(a) Whether the individual ~~who is the subject of the check~~ 73
should be granted a license or certificate under ~~this chapter or~~ 74
~~whether~~ section 4723.09, 4723.26, 4723.651, 4723.75, 4723.85, or 75
4723.89 of the Revised Code; 76

(b) Whether any temporary permit granted to the individual 77
under section 4723.09 of the Revised Code has terminated 78
automatically. 79

~~(2) The results may be made available to any person for 80
use in determining under division (D) of section 4723.24 of the 81
Revised Code whether; 82~~

(c) Whether the individual ~~who is the subject of the check~~ 83
should have the individual's license or certificate reactivated 84
or reinstated. 85

~~(3) The results may be made available to any person for 86
use in determining under section 4723.28 of the Revised Code 87
whether under division (D) of section 4723.24 of the Revised 88
Code; 89~~

(d) Whether the individual ~~who is the subject of the check~~ 90
should be subject to disciplinary action in accordance with ~~that~~ 91
section 4723.28 of the Revised Code. 92

~~(4) The results may be made available to the individual 93
who is the subject of the check or that individual's 94
representative. 95~~

Sec. 4723.092. The board of nursing shall not refuse to 96
issue a license under section 4723.09 of the Revised Code or a 97
certificate under section 4723.26, 4723.651, 4723.75, 4723.85, 98
or 4723.89 of the Revised Code because of a conviction of, plea 99
of guilty to, a judicial finding of guilt of, a judicial finding 100
of guilt resulting from a plea of no contest to, or a judicial 101
finding of eligibility for a pretrial diversion or similar 102
program or for intervention in lieu of a conviction for a 103
criminal offense unless the refusal is in accordance with 104
section 9.79 of the Revised Code. 105

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 118
Code, the board of nursing, by a vote of a quorum, may impose 119
one or more of the following sanctions: deny, revoke, suspend, 120
or place restrictions on any nursing license or dialysis 121
technician certificate issued by the board; reprimand or 122
otherwise discipline a holder of a nursing license or dialysis 123
technician certificate; or impose a fine of not more than five 124
hundred dollars per violation. The sanctions may be imposed for 125
any of the following: 126

(1) Denial, revocation, suspension, or restriction of 127
authority to engage in a licensed profession or practice a 128
health care occupation, including nursing or practice as a 129
dialysis technician, for any reason other than a failure to 130
renew, in Ohio or another state or jurisdiction; 131

(2) Engaging in the practice of nursing or engaging in 132
practice as a dialysis technician, having failed to renew a 133
nursing license or dialysis technician certificate issued under 134
this chapter, or while a nursing license or dialysis technician 135

certificate is under suspension; 136

(3) Conviction of, a plea of guilty to, a judicial finding 137
of guilt of, a judicial finding of guilt resulting from a plea 138
of no contest to, or a judicial finding of eligibility for a 139
pretrial diversion or similar program or for intervention in 140
lieu of conviction for, a misdemeanor committed in the course of 141
practice; 142

(4) Conviction of, a plea of guilty to, a judicial finding 143
of guilt of, a judicial finding of guilt resulting from a plea 144
of no contest to, or a judicial finding of eligibility for a 145
pretrial diversion or similar program or for intervention in 146
lieu of conviction for, any felony or of any crime involving 147
gross immorality or moral turpitude; 148

(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 157
of guilt of, a judicial finding of guilt resulting from a plea 158
of no contest to, or a judicial finding of eligibility for a 159
pretrial diversion or similar program or for intervention in 160
lieu of conviction for, an act in another jurisdiction that 161
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
practical nurse;	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
practice of nursing without a license or practice as a dialysis	219
technician without a certificate issued under this chapter;	220

(24) In the case of an advanced practice registered nurse, 221
except as provided in division (M) of this section, either of 222
the following: 223

(a) Waiving the payment of all or any part of a deductible 224
or copayment that a patient, pursuant to a health insurance or 225
health care policy, contract, or plan that covers such nursing 226
services, would otherwise be required to pay if the waiver is 227
used as an enticement to a patient or group of patients to 228
receive health care services from that provider; 229

(b) Advertising that the nurse will waive the payment of 230
all or any part of a deductible or copayment that a patient, 231
pursuant to a health insurance or health care policy, contract, 232
or plan that covers such nursing services, would otherwise be 233
required to pay. 234

(25) Failure to comply with the terms and conditions of 235
participation in the safe haven program conducted under sections 236
4723.35 and 4723.351 of the Revised Code; 237

(26) Failure to comply with the terms and conditions 238
required under the practice intervention and improvement program 239
established under section 4723.282 of the Revised Code; 240

(27) In the case of an advanced practice registered nurse: 241

(a) Engaging in activities that exceed those permitted for 242
the nurse's nursing specialty under section 4723.43 of the 243
Revised Code; 244

(b) Failure to meet the quality assurance standards 245
established under section 4723.07 of the Revised Code. 246

(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 Revised Code, unless the state board of pharmacy no longer maintains a drug database pursuant to section 4729.75 of the Revised Code;

(36) The revocation, suspension, restriction, reduction, or termination of clinical privileges by the United States department of defense or department of veterans affairs or the termination or suspension of a certificate of registration to prescribe drugs by the drug enforcement administration of the United States department of justice;

(37) In the case of an advanced practice registered nurse who is designated as a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner, failure to comply with the terms of a consult agreement entered into with a pharmacist pursuant to section 4729.39 of the Revised Code;

(38) Violation of section 4723.93 of the Revised Code;

(39) Failure to cooperate with an investigation conducted by the board under this chapter, including failure to comply with a subpoena or order issued by the board or failure to answer truthfully a question presented by the board in an investigative interview, in an investigative office conference, at a deposition, or in written interrogatories, except that failure to cooperate with an investigation does not constitute grounds for discipline if a court of competent jurisdiction has issued an order that either quashes a subpoena or permits the individual to withhold testimony or evidence at issue.

(C) Disciplinary actions taken by the board under divisions (A) and (B) of this section shall be taken pursuant to an adjudication conducted under Chapter 119. of the Revised

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 314
accordance with Chapter 119. of the Revised Code, the board may 315
appoint a hearing examiner, as provided in section 119.09 of the 316
Revised Code, to conduct any hearing the board is authorized to 317
hold under Chapter 119. of the Revised Code. 318

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 328
nurse, licensed practical nurse, or dialysis technician for an 329
act or crime described in divisions (B)(3) to (7) of this 330
section and the action is dismissed by the trial court other 331
than on the merits, the board shall conduct an adjudication to 332
determine whether the registered nurse, licensed practical 333
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
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, 375
or otherwise modify its records to reflect the court's sealing 376
or expungement of conviction records. 377

(F) The board may investigate an individual's criminal 378
background in performing its duties under this section. As part 379
of such investigation, the board may order the individual to 380
submit, at the individual's expense, a request to the bureau of 381
criminal identification and investigation for a criminal records 382
check and check of federal bureau of investigation records ~~in~~ 383
~~accordance with the procedure described in pursuant to~~ section 384
4723.091 of the Revised Code. 385

(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

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 399
physical examination when directed constitutes an admission of 400
the allegations, unless the failure is due to circumstances 401
beyond the individual's control, and a default and final order 402
may be entered without the taking of testimony or presentation 403
of evidence. 404

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, 414
licensed practical nurse, or dialysis technician or applicant 415
under this chapter shall be deemed to have given consent to 416
submit to a mental or physical examination when directed to do 417
so in writing by the board, and to have waived all objections to 418
the admissibility of testimony or examination reports that 419
constitute a privileged communication. 420

(H) The board shall investigate evidence that appears to 421
show that any person has violated any provision of this chapter 422
or any rule of the board. Any person may report to the board any 423
information the person may have that appears to show a violation 424
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 452
of an individual as part of or following any disciplinary action 453
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

(K) When the board refuses to grant a license or 466
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. 506