

SESSION OF 2008

**CONFERENCE COMMITTEE REPORT BRIEF  
HOUSE BILL NO. 2620**

As Agreed to April 4, 2008

**Brief\***

HB 2620 would create four new statutes that are made a part of and supplemental to the Kansas Healing Arts Act and would amend three statutes that are a part of the Act. In addition, the bill would create a new statute that concerns applicants for licenses to practice as nurses or mental health technicians.

**Healing Arts**

The bill would create a new statute that would allow the Board of Healing Arts to enter into a written agreement with a licensee in the healing arts for a professional development plan, to make written recommendations to a licensee, or to issue a written letter of concern to a licensee, if the Board, a committee of the Board, or a peer review committee determines the licensee:

- Seeks to meet requirements for license renewal by means other than completion of continued education requirements;
- Has been absent from clinical practice for an extended period of time and seeks to resume such practice;

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\*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

- Has failed to adhere to the applicable standard of care, but not to a degree that constitutes professional incompetence; or
- Has engaged in a practice act that, if continued, would reasonably be expected to result in future violations of the Healing Arts Act.

Such actions by the Board, a committee of the Board, or a peer review committee would be a non-disciplinary resolution that is not to be construed as a disciplinary action or failure to adhere to the applicable standard of care. Actions that would constitute a non-disciplinary resolution would be confidential and not admissible in any civil, criminal, or administrative action, except any subsequent disciplinary proceeding by the Board. Meetings to discuss a non-disciplinary resolution would not be subject to the Kansas Open Meetings Act or Kansas Administrative Procedure Act.

A new statute created by the bill would allow the Board of Healing Arts, in determining the fitness of a person who applies for an original license, or the reinstatement of any license, permit, or certificate to practice the healing arts, to require the applicant to be fingerprinted and submit to a state and national criminal history check. The new statute would set out the purposes for which the information could be used, specify the types of records to be released to the Board by law enforcement, and authorize the Board to assess a fee to reimburse the Board for the cost of fingerprinting and criminal history checks.

Another new statute created by the bill would require the Board to adopt a formal list of graduated sanctions for violations of the Healing Arts Act which could be used by the Board as a reference guide for the imposition of sanctions.

A third new statute would require the Board of Healing Arts, on and after July 1, 2010, to make specified information

about healing arts licensees available on a searchable website that is accessible to the public.

Amendments to an existing statute would give the Board new authority to place a licensee on probationary status and would authorize the Board, in certain circumstances, to take appropriate disciplinary action or enter into a non-disciplinary resolution on the basis of a single action of a licensee that, if continued, would reasonably be expected to constitute professional incompetency or unprofessional conduct as those terms are defined in the Healing Arts Act. The definition of unprofessional conduct relating to sexual misconduct would be amended to delete references to sexual exploitation and to add to sexual abuse or misconduct “other improper sexual contact with a patient, patient surrogates, or key third parties, which exploits the licensee-patient relationship.” The amendment also would add to the definition of unprofessional conduct, the act of engaging in conduct which violates patient trust and exploits the licensee-patient relationship for personal gain.

Another statute would be amended to authorize the Board to contract with one or more persons who are licensed to practice the healing arts and who are not members of the Board to provide advice and assistance as necessary on licensure matters; in the review, investigation, and disposition of complaints; on clinical and patient care matters; on the ethical practices and professional practices of licensees; or on other duties assigned by the Executive Director of the Board.

### **Nursing and Mental Health Technology**

A new statute concerning nursing and mental health technicians would be created by the bill. The new provisions would authorize the Board of Nursing to require any applicant for an original license to practice as a professional nurse, practical nurse, or mental health technician, to be fingerprinted, and to submit to a state and national criminal history record check. The fingerprints would be required to be used to identify the applicant and to determine whether the applicant has a

criminal history record in Kansas or other jurisdictions. Information from the criminal history check could be used by the Board in making a determination of the applicant's character and fitness for a nursing or mental health technician license. Local and state law enforcement officers and agencies would be required to assist the Board in taking and processing fingerprints and the release of all records of adult convictions and nonconvictions and adult convictions and adjudications in other jurisdictions to the Board.

The bill would authorize the Board of Nursing to set a fee for fingerprinting in an amount needed to reimburse the Board for the cost of fingerprinting and criminal record check and to deposit such fees into the Criminal Background and Fingerprinting Fund that would be created by the bill.

### **Conference Committee Action**

The Conference Committee agreed to do the following:

- Amend the bill by replacing the term “professional incompetency” with the terminology of “inability to practice the healing arts with reasonable skill and safety to patients;” and
- Amend the sexual abuse of a patient language to include a reference to anyone who has authority to affect health care decisions on behalf of the patient.

### **Background**

The original bill, as introduced by the Special Committee on Judiciary, was in response to a request from the Board of Healing Arts. Larry Buening, Executive Director, State Board of Healing Arts, expressed support for the bill. Barb Hinton, Legislative Post Auditor, provided background information on the bill and addressed the 2006 performance audit entitled *Board of Healing Arts: Reviewing Issues Related to Complaint*

*Investigations, Background Investigations, and Composition of the Board.* There was no opposition to the bill at the Committee hearing. Dan Morin, Kansas Medical Society, offered comments regarding the bill. Callie Denton Hartle, Kansas Association for Justice, submitted neutral testimony on the bill.

The House Judiciary Committee amended HB 2620 by incorporating the language of 2007 SB 81 concerning fingerprinting and criminal history record checks for applicants for licensees to practice the healing arts into HB 2620.

The House Committee of the Whole amendment required the Board to adopt, through rules and regulations, a formal list of graduated sanctions for violations, specifying the number and severity of violations for the imposition of each level of sanction.

In testimony before the Senate Health Care Strategies Committee, Larry Buening, Executive Director of the Board of Healing Arts, spoke in support of the bill. Jerry Slaughter, Executive Director of the Kansas Medical Society, spoke in support of and offered amendments to the bill. Written testimony in support of the bill was provided by Bob Williams, Executive Director, Kansas Association of Osteopathic Medicine. Callie Denton Hartle, Kansas Association of Justice, provided neutral testimony on the bill. There were no opponents to the bill.

Six amendments offered by the Kansas Medical Society and supported by the Board of Healing Arts were adopted by the Committee. The amendments include:

- Authorizing the Board of Healing Arts, under certain circumstances, to take appropriate disciplinary action or enter into a non-disciplinary resolution on the basis of a single action of a licensee;
- Changing the part of the definition of “unprofessional conduct” that relates to sexual misconduct and adding a new part to the definition that relates to conduct which

violates patient trust and exploits the licensee-patient relationship for personal gain;

- Authorizing the Board to contract with practitioners of the healing arts to assist with complaints and other matters;
- Deleting from the list of records for state and national criminal background checks, juvenile records and expunged records;
- Requiring the Board to adopt a formal list of graduated sanctions for violations of the Kansas Health Arts Act which may be used as a reference guide for the imposition of sanctions; and
- Requiring the Board to make available specified information regarding licensees on a searchable website that is accessible to the public.

The Senate Committee of the Whole amended the provisions of 2007 SB 107 relating to fingerprinting and criminal history checks for initial licensees in nursing and mental health technology into the bill.

The fiscal note prepared by the Division of the Budget states that passage of the original bill would have no fiscal effect on the agency. There is no fiscal note available on the bill as amended.