

1 SB133  
2 180836-1  
3 By Senator Dial  
4 RFD: Health and Human Services  
5 First Read: 09-FEB-17

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8 SYNOPSIS: Under existing law, the State Board of  
9 Nursing employs investigators who investigate  
10 alleged violations of the Nurse Practice Act,  
11 including violations involving drugs or controlled  
12 substances. The investigators do not have the power  
13 of law enforcement officers and are not required to  
14 meet the minimum standards for law enforcement  
15 officers.

16 This bill would grant investigators of the  
17 Board of Nursing who meet the minimum standards of  
18 the Alabama Peace Officers' Minimum Standards and  
19 Training Commission authority to exercise the  
20 powers of law enforcement officers, except the  
21 power to make arrests, in investigating alleged  
22 violations perpetrated by licensees of the Nurse  
23 Practice Act and the Alabama Uniform Controlled  
24 Substances Act.

25 This bill would also authorize the Board of  
26 Nursing to expunge, for purposes of public

1 disclosure, records of disciplinary actions taken  
2 against licensed nurses.

3  
4 A BILL  
5 TO BE ENTITLED  
6 AN ACT

7  
8 Relating to the Board of Nursing; to amend Sections  
9 20-2-90 and 34-21-2, Code of Alabama 1975; to grant  
10 investigators of the board who meet the minimum standards of  
11 the Alabama Peace Officers' Minimum Standards and Training  
12 Commission authority to exercise the powers of law enforcement  
13 officers, except the power to make arrests, in investigating  
14 alleged violations perpetrated by licensees of the Nurse  
15 Practice Act and the Alabama Uniform Controlled Substances  
16 Act; and to authorize the Board of Nursing to expunge, for  
17 purposes of public disclosure, records of disciplinary actions  
18 taken against licensed nurses.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Sections 20-2-90 and 34-21-2, Code of  
21 Alabama 1975, are amended to read as follows:

22 "§20-2-90.

23 "(a) The State Board of Pharmacy and its drug  
24 inspectors shall enforce all provisions of this chapter. The  
25 agents and officers of ~~this~~ the Alabama State Law Enforcement  
26 Agency, the drug and narcotic agents and inspectors of the  
27 State Board of Health, the investigators of the State Board of

1 Medical Examiners, the investigators of the Board of Dental  
2 Examiners, the investigators of the Board of Nursing, and all  
3 ~~peace~~ law enforcement officers of the state and all  
4 prosecuting attorneys are also charged with the enforcement of  
5 this chapter. The agents and officers of the Alabama State Law  
6 Enforcement Agency, the drug inspectors of the State Board of  
7 Pharmacy, the investigators of the State Board of Medical  
8 Examiners, the investigators of the Board of Dental Examiners,  
9 the investigators of the Board of Nursing, and the drug and  
10 narcotic agents and inspectors of the State Board of Health  
11 shall have the powers of ~~peace~~ law enforcement officers in the  
12 performance of their duties to:

13           "(1) Make arrests without warrant for any offense  
14 under this chapter committed in their presence, or if they  
15 have probable cause to believe that the person to be arrested  
16 has committed or is committing a violation of this chapter  
17 which may constitute a felony.

18           "(2) Make seizures of property pursuant to this  
19 chapter.

20           "(3) Carry firearms in the performance of their  
21 official duties.

22           "(b) Notwithstanding subdivision (1) of subsection  
23 (a), the investigators of the Board of Nursing shall not have  
24 the power to make arrests.

25           "(c) In addition to the requirements of subsection  
26 (a), drug inspectors of the State Board of Pharmacy shall,

1 beginning October 1, 1993, meet the minimum standards required  
2 of ~~peace~~ law enforcement officers in this state.

3 "§34-21-2.

4 "(a) There is created the Board of Nursing, which  
5 shall be composed of 13 members to be appointed and have the  
6 duties and powers enumerated in this section. The membership  
7 of the board shall be inclusive and reflect the racial,  
8 gender, geographic, urban/rural, and economic diversity of the  
9 state. In order to insure continuity of administration, the  
10 nine board members provided for by Section 3 of Act 427,  
11 Regular Session 1975, shall continue to serve to the  
12 completion of the term for which they are serving. The  
13 Governor, within 60 days of January 1, 1984, shall appoint a  
14 tenth member who shall be a licensed practical nurse for a  
15 term of four years from a list of nominees furnished him or  
16 her by the Alabama Federation of Licensed Practical Nurses,  
17 Incorporated. As the terms of all board members expire, their  
18 successors shall be appointed for terms of four years each.  
19 Vacancies in unexpired terms shall be filled in the same  
20 manner as original appointments are made. No member shall be  
21 appointed to more than two consecutive terms of four years  
22 each. Eight members of the board shall be licensed  
23 professional nurses, and four members of the board shall be  
24 licensed practical nurses.

25 "(b) (1) The Governor shall appoint the members of  
26 the board who are licensed professional nurses from a list of  
27 nominees who are selected by the Board of Nursing Nomination

1 Committee and furnished to the Governor by the Alabama State  
2 Nurses' Association, and such list, when furnished, shall  
3 contain at least twice the number of nominees as there are  
4 appointments to be made or vacancies to be filled. The Alabama  
5 State Nurses' Association, on or before December 1 of each  
6 year, or at such other times as necessary, shall furnish the  
7 Governor with a list of licensed professional nurses qualified  
8 for appointment to the board. In the nominating and appointing  
9 process, due care shall be taken to ensure the maintenance of  
10 qualified representation from the fields of nursing education,  
11 nursing administration, clinical nursing, and advanced  
12 practice nursing.

13           "(2) The Governor shall appoint two of the members  
14 of the board who are to be licensed practical nurses from a  
15 list of nominees furnished him or her by the Board of  
16 Directors of the Licensed Practical Nurses Association of  
17 Alabama, and such list, when furnished, shall contain at least  
18 twice the number of nominees for the vacancies to be filled.  
19 The Board of Directors of the Licensed Practical Nurses  
20 Association of Alabama, on or before December 1 of each year  
21 in which the term of office of a board member or a nominee of  
22 the Board of Directors shall expire, or at such other time as  
23 necessary, shall furnish the Governor with such list of  
24 licensed practical nurses qualified for appointment to the  
25 board.

26           "(3) The Governor shall appoint two members on the  
27 board who are to be licensed practical nurses from a list of

1 nominees furnished him or her by the Board of Directors of the  
2 Alabama Federation of Licensed Practical Nurses, Incorporated,  
3 and such list, when furnished, shall contain at least twice  
4 the number of nominees for the vacancies to be filled. The  
5 Board of Directors of the Alabama Federation of Licensed  
6 Practical Nurses, Incorporated, on or before December 1 of  
7 each year in which the term of office of the board member  
8 filled by the nominee of such board of directors shall expire,  
9 or at such other times as necessary, shall furnish the  
10 Governor with a list of licensed practical nurses qualified  
11 for appointment to the board.

12 "(c) The Governor may remove any member from the  
13 board for neglect of duty of the board, incompetency, or  
14 unprofessional or dishonorable conduct.

15 "(d) Each person appointed to the board as a  
16 licensed professional nurse shall be a citizen of the United  
17 States, a resident of the State of Alabama, and have all of  
18 these additional qualifications:

19 "(1) Be a graduate of a state-approved educational  
20 program for the preparation of practitioners of professional  
21 nursing.

22 "(2) Be a currently licensed professional nurse in  
23 Alabama.

24 "(3) Have a minimum of five years' successful  
25 nursing experience in an administrative, teaching, clinical  
26 capacity, or advanced practice.

1           "(4) Be actively engaged in professional nursing in  
2 this state immediately preceding and during appointment.

3           "(e) Each person appointed to the board as a  
4 licensed practical nurse shall be a citizen of the United  
5 States, a resident of the State of Alabama, and have all of  
6 these additional qualifications:

7           "(1) Hold a diploma from an accredited high school  
8 or its equivalent.

9           "(2) Be a graduate of a state-approved vocational  
10 educational program for the preparation of practitioners of  
11 licensed practical nursing.

12           "(3) Be a currently licensed practical nurse in  
13 Alabama.

14           "(4) Have a minimum of five years' successful  
15 nursing experience.

16           "(5) Be actively engaged in licensed practical  
17 nursing in this state immediately preceding and during  
18 appointment.

19           "(f) There shall be one member of the board who is a  
20 consumer and who is not a member of any of the health care  
21 professions. The consumer member shall be appointed by the  
22 Governor effective January 1, 1998, and shall serve for a term  
23 of four years. His or her successor shall be appointed in a  
24 like manner at the expiration of each term or upon a vacancy  
25 for the remainder of an unexpired term of office. The consumer  
26 member of the board shall have, presently or formerly, no  
27 direct financial interest in any health care facility,



1 profession, agency, or insurer, or be or have been a health  
2 care worker.

3 "(g) There shall be two advanced practice nurse  
4 positions to be filled effective January 1, 1998, in the same  
5 manner as all other professional nurse positions. One advanced  
6 practice nurse position shall be served for an initial  
7 five-year term and successors shall serve four-year terms. The  
8 remaining member appointed to an advance practice nurse  
9 position shall serve an initial four-year term and successors  
10 shall serve four-year terms.

11 "(h) All members of the board shall enjoy immunity  
12 from individual civil liability while acting within the scope  
13 of their duties as board members.

14 "(i) The board shall have the following powers and  
15 perform the following duties: It shall meet at least once a  
16 year and shall, at its organizational meeting and at its  
17 annual meetings thereafter, elect from its members a  
18 president, a vice-president, and a secretary. It may hold such  
19 other and additional meetings during any year as it deems  
20 necessary for the transaction of business. A majority of the  
21 board, including one officer, shall constitute a quorum at any  
22 meeting.

23 "(j) The board may:

24 "(1) Adopt and, from time to time, revise such rules  
25 and regulations, not inconsistent with law, as may be  
26 necessary to carry out this chapter.

1           "(2) Prescribe standards and approve curricula for  
2 nursing educational programs preparing persons for licensure  
3 under this chapter.

4           "(3) Provide for surveys and evaluations of such  
5 programs at such times as it may deem necessary.

6           "(4) Approve such nursing educational programs as  
7 meet the requirements of this chapter and the board. Nothing  
8 in this chapter shall be construed to diminish the power of  
9 the State Board of Education or other constitutionally or  
10 legislatively established state agencies to govern the schools  
11 under their respective jurisdictions.

12           "(5) Deny or withdraw approval from educational  
13 programs for failure to meet prescribed standards. Withdrawal  
14 of approval shall be effected only after a hearing in  
15 accordance with board rules and regulations.

16           "(6) Examine, license, and renew the licenses of  
17 duly qualified applicants and require employers to submit  
18 listings of personnel covered by this chapter to the board  
19 upon request.

20           "(7) Conduct investigations, hearings, and  
21 proceedings concerning alleged violations of this section or  
22 of the rules and regulations of the board.

23           "(8) Have the power to issue subpoenas, compel the  
24 attendance of witnesses, and administer oaths to persons  
25 giving testimony at hearings.

26           "(9) Cause the prosecution of all persons violating  
27 this chapter and incur such necessary expenses therefor.

1           "(10) Expunge, for purposes of public disclosure,  
2           records of prior disciplinary actions taken against licensees.

3           "~~(10)~~(11) Keep a public record of all of its  
4           proceedings.

5           "~~(11)~~(12) Keep a register of all licensees.

6           "~~(12)~~(13) Make an annual report to the Governor.

7           "~~(13)~~(14) Appoint and employ a qualified person, not  
8           subject to the state Merit System, who shall not be a member  
9           of the board, to serve as executive officer.

10          "~~(14)~~(15) Define the duties and fix the compensation  
11          for the executive officer.

12          "~~(15)~~(16) Employ such other persons as may be  
13          necessary to carry on the work of the board and provide for  
14          appropriate bonding of employees. Regular employees of the  
15          board shall be employed subject to the state Merit System in  
16          effect on January 1, 1966, or at the time of employment.

17          "~~(16)~~(17) Employ consultants, specialists, counsel,  
18          or other specially qualified persons under contract or on a  
19          part-time basis to assist it in administering this chapter and  
20          without regard to the state Merit System in effect on or after  
21          January 1, 1966, and pay for the services of such persons.

22          "~~(17)~~(18) Accept gifts and grants upon terms and  
23          conditions imposed by it through official resolutions.

24          "~~(18)~~(19) Perform such other duties, not  
25          inconsistent with law, as required by this chapter to foster  
26          and improve nursing and the regulation thereof and the public  
27          health of this state.

1           "~~(19)~~ (20) Expend funds of the board in exercising  
2 its powers and duties and in administering this chapter.

3           "~~(20)~~ (21) Determine and collect reasonable fees.

4           "~~(21)~~ (22) Adopt standards for registered and  
5 practical nursing practice and for continued competency of  
6 licensees.

7           "~~(22)~~ (23) Join organizations that develop and  
8 regulate the national nursing licensure examinations and  
9 promote the improvement of the legal standards of the practice  
10 of nursing for the protection of the public health, safety,  
11 and welfare.

12           "(k) The executive officer employed by the board  
13 shall be a citizen of the United States, a person of the  
14 highest integrity, and possess these additional  
15 qualifications: Be a licensed professional nurse in Alabama or  
16 eligible for licensure, be a graduate of a professional  
17 nursing program approved by the state in which the program was  
18 completed, hold a master's degree, and have had a varied  
19 experience in nursing, including at least five years'  
20 experience in an administrative or teaching capacity.

21           "(l) The executive officer shall be bonded for the  
22 faithful performance of the duties of the office in the sum of  
23 not less than five thousand dollars (\$5,000), and the premium  
24 of the bond shall be paid out of the funds of the board.

25           "(m) Each member of the board shall receive the same  
26 per diem and travel allowance as is paid by law to state  
27 employees for each day's attendance at the board meetings

1 incurred in the discharge of his or her duties as a board  
2 member in addition to any daily compensation or allowance, if  
3 any, as may be provided by the board, in such amount as may be  
4 determined by the board. Any member of the board engaged in  
5 duties under the direction of the board shall receive the per  
6 diem and travel expenses and daily compensation or allowance  
7 authorized by the board.

8 "(n) (1) Except as provided in subdivision (2),  
9 investigators employed by the board who comply with the  
10 Alabama Peace Officers' Minimum Standards and Training Act  
11 shall have the authority of a law enforcement officer,  
12 including the authority to inspect documents and to enforce  
13 laws involving an alleged violation of this chapter or an  
14 alleged violation of Chapter 2 of Title 20, when the alleged  
15 violation is committed by a licensed nurse or by an applicant  
16 for licensure as a nurse.

17 "(2) The investigators shall not have the power to  
18 make arrests.

19 "(3) The officers shall not be entitled to overtime  
20 compensation pursuant to Sections 36-21-4 and 36-21-5 or to  
21 compensation pursuant to the requirements of Section 36-21-13.

22 "(o) Nothing in this chapter shall limit the rights  
23 of affected parties to appeal decisions of the board with  
24 regard to rules and regulations promulgated pursuant to this  
25 chapter."

1                   Section 2. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.