

BILL ANALYSIS

C.S.H.B. 1128
By: McReynolds
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the Texas Board of Nursing's only options to address minor violations are to either dismiss the complaint or take disciplinary action against the nurse found in violation, an action which remains on the nurse's permanent record.

C.S.H.B. 1128 provides the Texas Board of Nursing with options that focus on remediation and corrective action for minor violations, rather than punishment. The bill requires the board to study the feasibility of conducting a pilot program to evaluate the efficiency and effectiveness of different disciplinary measures and corrective actions for nurses and to implement such a program if determined feasible.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Nursing in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 1128 amends the Occupations Code to authorize the Texas Board of Nursing to impose a corrective action on a person licensed or regulated under the Nursing Practice Act who violates its provisions or a rule or order adopted under its provisions. The bill specifies that the corrective action may be a fine, remedial education, or any combination thereof; is not a disciplinary action under disciplinary provisions of the Nursing Practice Act; and is subject to disclosure only to the extent a complaint is subject to disclosure under the confidentiality provisions relating to disciplinary actions. The bill requires the board by rule to adopt guidelines for the types of violations for which a corrective action may be imposed.

C.S.H.B. 1128 authorizes the executive director of the board, if the executive director determines that a person has committed a violation for which corrective action may be imposed under the adopted guidelines, to give written notice of the determination and recommendation for corrective action to the person subject to the corrective action and authorizes the notice to be given by certified mail. The bill requires the notice to include a brief summary of the alleged violation, state the recommended corrective action, and inform the person of the person's options in responding to the notice.

C.S.H.B. 1128 authorizes a person, not later than the 20th day after the date the person receives such written notice, to accept in writing the executive director's determination and recommended corrective action or reject the executive director's determination and recommended corrective action. The bill specifies that if the person accepts the executive director's determination and satisfies the recommended corrective action, the case is closed. The bill requires the executive director to terminate the corrective action proceedings and dispose of the matter as a complaint under the disciplinary action provisions if the person does not accept the executive director's determination and recommended corrective action as originally proposed or as modified by the board or fails to respond in a timely manner to the notice. The bill requires the executive

director to report periodically to the board on the corrective actions imposed under the bill's provisions, including the number of corrective actions imposed, the types of violations for which corrective actions were imposed, and whether affected nurses accepted the corrective actions.

C.S.H.B. 1128 specifies that, except as otherwise provided, a person's acceptance of a recommended corrective action does not constitute an admission of a violation, but does constitute a plea of nolo contendere. The bill authorizes the board to treat a person's acceptance of a corrective action as an admission of a violation if the board imposes a sanction on the person for a subsequent violation.

C.S.H.B. 1128 requires the board, not later than February 1, 2010, to determine the feasibility of conducting a pilot program designed to evaluate the efficacy and effect on the public's protection of board deferral of disciplinary action against a person licensed or regulated under the Nursing Practice Act in cases in which the board proposes to impose a sanction other than a reprimand or a denial, suspension, or revocation of a license. The bill requires the board to develop and implement the pilot program not later than February 1, 2011, if the board determines the pilot program is feasible, and requires the pilot program to conclude not later than January 1, 2014. The bill prohibits the pilot program from including cases in which the board proposes to issue a reprimand or to deny, suspend, or revoke a license. The bill authorizes the board, during the time the pilot program is implemented and for any action or complaint for which the board proposes to impose a sanction other than a reprimand or a denial, suspension, or revocation of a license, to defer final disciplinary action proposed against a person licensed or regulated under the Nursing Practice Act if the person conforms to conditions imposed by the board, including any condition the board could impose as a condition of probation and, if the person successfully meets the imposed conditions, to dismiss the complaint. The bill specifies that a deferred disciplinary action by the board under the pilot program is not confidential and is subject to disclosure in accordance with public information laws, but if the person successfully meets the conditions imposed by the board in deferring final disciplinary action and the board dismisses the action or complaint, the board's action is confidential to the same extent as a complaint filed under the disciplinary action provisions.

C.S.H.B. 1128 authorizes the board to contract with a third party to evaluate the pilot program and requires the board to appoint an advisory committee to assist in overseeing the pilot program and its evaluation. The bill requires the committee to include representatives of public advocacy organizations. The bill specifies that provisions relating to the pilot program expire September 1, 2014. The bill makes its provisions applicable to actions for violations under the Nursing Practice Act pending on the effective date of the bill or commenced on or after the effective date of the bill.

C.S.H.B. 1128 defines "corrective action" and "deferred disciplinary action."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1128 adds a provision not in the original granting rulemaking authority to the Texas Board of Nursing to adopt guidelines for the types of violations for which a corrective action may be imposed.

C.S.H.B. 1128 differs from the original by authorizing the executive director of the board to issue written notice of a determination of a violation, rather than requiring the issuance of such notice as in the original. The substitute omits a deadline for the submission of such a notice included in the original. The substitute omits a provision from the original authorizing the executive director to issue a report to the board stating certain information relating to the

determination. The substitute omits a provision in the original authorizing the board, if three or more members disagree with the executive director's determination and recommendation, to modify a determination or corrective action or to dismiss the case. The substitute differs from the original by authorizing the notice to be given by certified mail, rather than requiring that method of delivery as in the original.

C.S.H.B. 1128 adds a provision not in the original requiring the executive director to periodically report to the board on the corrective actions imposed. The substitute adds a provision not in the original authorizing the board to treat a person's acceptance of a corrective action as an admission of a violation.