

By: McReynolds

H.B. No. 1128

Substitute the following for H.B. No. 1128:

By: Laubenberg

C.S.H.B. No. 1128

A BILL TO BE ENTITLED

1 AN ACT
2 relating to certain corrective actions by the Texas Board of
3 Nursing, including a pilot program on deferred disciplinary action;
4 providing corrective actions.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 301, Occupations Code, is amended by
7 adding Subchapter N to read as follows:

8 SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING

9 Sec. 301.651. DEFINITION. In this subchapter, "corrective
10 action" means a fine or remedial education imposed under Section
11 301.652.

12 Sec. 301.652. IMPOSITION OF CORRECTIVE ACTION. (a) The
13 board may impose a corrective action on a person licensed or
14 regulated under this chapter who violates this chapter or a rule or
15 order adopted under this chapter. The corrective action:

16 (1) may be a fine, remedial education, or any
17 combination of a fine or remedial education;

18 (2) is not a disciplinary action under Subchapter J;
19 and

20 (3) is subject to disclosure only to the extent a
21 complaint is subject to disclosure under Section 301.466.

22 (b) The board by rule shall adopt guidelines for the types
23 of violations for which a corrective action may be imposed.

24 Sec. 301.653. REPORT AND NOTICE OF VIOLATION AND CORRECTIVE

1 ACTION. If the executive director determines that a person has
2 committed a violation for which a corrective action may be imposed
3 under the guidelines adopted under Section 301.652(b), the
4 executive director may give written notice of the determination and
5 recommendation for corrective action to the person subject to the
6 corrective action. The notice may be given by certified mail. The
7 notice must:

- 8 (1) include a brief summary of the alleged violation;
9 (2) state the recommended corrective action; and
10 (3) inform the person of the person's options in
11 responding to the notice.

12 Sec. 301.654. RESPONSE. Not later than the 20th day after
13 the date the person receives the notice under Section 301.653, the
14 person may:

- 15 (1) accept in writing the executive director's
16 determination and recommended corrective action; or
17 (2) reject the executive director's determination and
18 recommended corrective action.

19 Sec. 301.655. ACTION FOLLOWING RESPONSE. (a) If the person
20 accepts the executive director's determination and satisfies the
21 recommended corrective action, the case is closed.

22 (b) If the person does not accept the executive director's
23 determination and recommended corrective action as originally
24 proposed or as modified by the board or fails to respond in a timely
25 manner to the executive director's notice as provided by Section
26 301.654, the executive director shall:

- 27 (1) terminate proceedings under this subchapter; and

1 (2) dispose of the matter as a complaint under
2 Subchapter J.

3 Sec. 301.656. REPORT TO BOARD. The executive director
4 shall report periodically to the board on the corrective actions
5 imposed under this subchapter, including:

6 (1) the number of corrective actions imposed;

7 (2) the types of violations for which corrective
8 actions were imposed; and

9 (3) whether affected nurses accepted the corrective
10 actions.

11 Sec. 301.657. EFFECT ON ACCEPTANCE OF CORRECTIVE ACTION.

12 (a) Except to the extent provided by this section, a person's
13 acceptance of a corrective action under this subchapter does not
14 constitute an admission of a violation but does constitute a plea of
15 nolo contendere.

16 (b) The board may treat a person's acceptance of corrective
17 action as an admission of a violation if the board imposes a
18 sanction on the person for a subsequent violation of this chapter or
19 a rule or order adopted under this chapter.

20 SECTION 2. Subchapter D, Chapter 301, Occupations Code, is
21 amended by adding Section 301.1607 to read as follows:

22 Sec. 301.1607. PILOT PROGRAM ON DEFERRAL OF FINAL
23 DISCIPLINARY ACTION. (a) In this section, "deferred disciplinary
24 action" means a final disciplinary action against a person licensed
25 or regulated under this chapter that is deferred by the board as
26 provided by this section.

27 (b) Not later than February 1, 2010, the board shall

1 determine the feasibility of conducting a pilot program designed to
2 evaluate the efficacy and effect on the public's protection of
3 board deferral of disciplinary action against a person licensed or
4 regulated under this chapter in cases in which the board proposes to
5 impose a sanction other than a reprimand or a denial, suspension, or
6 revocation of a license. If the board determines the pilot program
7 is feasible, the board shall develop and implement the pilot
8 program not later than February 1, 2011. The pilot program must
9 conclude not later than January 1, 2014.

10 (c) The pilot program may not include cases in which the
11 board proposes to issue a reprimand or to deny, suspend, or revoke a
12 license.

13 (d) During the time the pilot program is implemented and for
14 any action or complaint for which the board proposes to impose a
15 sanction other than a reprimand or a denial, suspension, or
16 revocation of a license, the board may:

17 (1) defer final disciplinary action the board has
18 proposed against a person licensed or regulated under this chapter
19 if the person conforms to conditions imposed by the board,
20 including any condition the board could impose as a condition of
21 probation under Section 301.468; and

22 (2) if the person successfully meets the imposed
23 conditions, dismiss the complaint.

24 (e) Except as otherwise provided by this subsection, a
25 deferred disciplinary action by the board under the pilot program
26 is not confidential and is subject to disclosure in accordance with
27 Chapter 552, Government Code. If the person successfully meets the

1 conditions imposed by the board in deferring final disciplinary
2 action and the board dismisses the action or complaint, the
3 deferred disciplinary action of the board is confidential to the
4 same extent as a complaint filed under Section 301.466.

5 (f) The board may contract with a third party to evaluate
6 the pilot program established under this section.

7 (g) The board shall appoint an advisory committee to assist
8 the board in overseeing the pilot program and its evaluation. The
9 committee must include representatives of public advocacy
10 organizations.

11 (h) This section expires September 1, 2014.

12 SECTION 3. The changes in law made by this Act to Chapter
13 301, Occupations Code, apply to actions for violations under
14 Chapter 301 pending on the effective date of this Act or commenced
15 on or after the effective date of this Act.

16 SECTION 4. This Act takes effect September 1, 2009.