

By: McReynolds

H.B. No. 1128

A BILL TO BE ENTITLED

AN ACT

relating to certain corrective actions by the Texas Board of Nursing including a pilot program on deferred disciplinary action; providing corrective actions.

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

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

SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING

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

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

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

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

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

Sec. 301.653. REPORT AND NOTICE OF VIOLATION AND CORRECTIVE ACTION. (a) If the executive director determines that a violation has occurred, the executive director may issue a report to the board

1 stating:

2 (1) the facts on which the determination is based; and

3 (2) a recommended corrective action.

4 (b) If three or more members of the board disagree with the
5 executive director's determination and recommendation for
6 corrective action, the board may:

7 (1) modify the determination or corrective action; or

8 (2) dismiss the case.

9 (c) The executive director shall give written notice of the
10 determination and recommendation for corrective action to the
11 person subject to the corrective action not later than the 14th day
12 after the date the determination is issued. The notice must be
13 given by certified mail. The notice must:

14 (1) include a brief summary of the alleged violation;

15 (2) state the recommended corrective action; and

16 (3) inform the person of the person's options in
17 responding to the notice.

18 Sec. 301.654. RESPONSE. Not later than the 20th day after
19 the date the person receives the notice under Section 301.653(c),
20 the person may:

21 (1) accept in writing the executive director's
22 determination and recommended corrective action; or

23 (2) reject the executive director's determination and
24 recommended corrective action.

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

1 (b) If the person does not accept the executive director's
2 determination and recommended corrective action as originally
3 proposed or as modified by the board or fails to respond in a timely
4 manner to the executive director's notice as provided by Section
5 301.654, the executive director shall:

- 6 (1) terminate proceedings under this subchapter; and
7 (2) dispose of the matter as a complaint under
8 Subchapter J.

9 Sec. 301.656. EFFECT OF ACCEPTANCE OF CORRECTIVE ACTION. A
10 person's acceptance of a corrective action under this subchapter
11 does not constitute an admission of a violation, but does
12 constitute a plea of nolo contendere.

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

15 Sec. 301.1607. PILOT PROGRAM ON DEFERRAL OF FINAL
16 DISCIPLINARY ACTION. (a) In this section, "deferred disciplinary
17 action" means a final disciplinary action against a person licensed
18 or regulated under this chapter that is deferred by the board as
19 provided by this section.

20 (b) Not later than February 1, 2010, the board shall
21 determine the feasibility of conducting a pilot program designed to
22 evaluate the efficacy and effect on the public's protection of
23 board deferral of disciplinary action against a person licensed or
24 regulated under this chapter in cases in which the board proposes to
25 impose a sanction other than a reprimand or a denial, suspension, or
26 revocation of a license. If the board determines the pilot program
27 is feasible, the board shall develop and implement the pilot

1 program not later than February 1, 2011. The pilot program must
2 conclude not later than January 1, 2014.

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

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

10 (1) defer final disciplinary action the board has
11 proposed against a person licensed or regulated under this chapter
12 if the person conforms to conditions imposed by the board,
13 including any condition the board could impose as a condition of
14 probation under Section 301.468; and

15 (2) if the person successfully meets the imposed
16 conditions, dismiss the complaint.

17 (e) Except as otherwise provided by this subsection, a
18 deferred disciplinary action by the board under the pilot program
19 is not confidential and is subject to disclosure in accordance with
20 Chapter 552, Government Code. If the person successfully meets the
21 conditions imposed by the board in deferring final disciplinary
22 action and the board dismisses the action or complaint, the
23 deferred disciplinary action of the board is confidential to the
24 same extent as a complaint filed under Section 301.466.

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

27 (g) The board shall appoint an advisory committee to assist

1 the board in overseeing the pilot program and its evaluation. The
2 committee must include representatives of public advocacy
3 organizations.

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

5 SECTION 3. The changes in law made by this Act to Chapter
6 301, Occupations Code, apply to actions for violations under
7 Chapter 301 pending on the effective date of this Act or commenced
8 on or after the effective date of this Act.

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