

1-1 By: Nelson S.B. No. 806  
1-2 (In the Senate - Filed February 11, 2009; March 4, 2009, read  
1-3 first time and referred to Committee on Health and Human Services;  
1-4 March 23, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 23, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 806 By: Huffman

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the imposition of a disciplinary action on a licensed  
1-11 nursing facility administrator; providing a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 242.002, Health and Safety Code, is  
1-14 amended by amending Subdivision (4) and adding Subdivision (5-a) to  
1-15 read as follows:

1-16 (4) "Department" means the [~~Texas~~] Department of Aging  
1-17 and Disability [~~Human~~] Services.

1-18 (5-a) "Executive commissioner" means the executive  
1-19 commissioner of the Health and Human Services Commission.

1-20 SECTION 2. Subsections (a), (c), (d), and (e), Section  
1-21 242.313, Health and Safety Code, as added by Section 1.01, Chapter  
1-22 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session,  
1-23 1997, are amended to read as follows:

1-24 (a) The department may revoke, suspend, or refuse to renew a  
1-25 nursing facility administrator's license, assess an administrative  
1-26 penalty, issue a written reprimand, require participation in  
1-27 continuing education, or place an administrator on probation, after  
1-28 due notice and the opportunity for a hearing, on proof of any of the  
1-29 following grounds:

1-30 (1) the license holder has wilfully or repeatedly  
1-31 violated a provision of this subchapter or a rule adopted under this  
1-32 subchapter;

1-33 (2) the license holder has wilfully or repeatedly  
1-34 acted in a manner inconsistent with the health and safety of the  
1-35 residents of a facility of which the license holder is an  
1-36 administrator;

1-37 (3) the license holder obtained or attempted to obtain  
1-38 a license through misrepresentation or deceit or by making a  
1-39 material misstatement of fact on a license application;

1-40 (4) the license holder's use of alcohol or drugs  
1-41 creates a hazard to the residents of a facility;

1-42 (5) a judgment of a court of competent jurisdiction  
1-43 finds that the license holder is mentally incapacitated;

1-44 (6) the license holder has been convicted in a court of  
1-45 competent jurisdiction of a misdemeanor or felony involving moral  
1-46 turpitude; [~~or~~]

1-47 (7) the license holder has been convicted in a court of  
1-48 competent jurisdiction of an offense listed in Section 250.006; or

1-49 (8) the license holder has been negligent or  
1-50 incompetent in the license holder's duties as a nursing facility  
1-51 administrator.

1-52 (c) A license holder is entitled to a hearing in accordance  
1-53 with rules adopted [~~promulgated~~] by the executive commissioner  
1-54 [~~board~~] before a sanction is imposed under this section.

1-55 (d) The executive commissioner [~~board~~] by rule shall adopt a  
1-56 broad schedule of sanctions for violations under this subchapter.  
1-57 The department shall use the schedule for any sanction imposed [~~as~~  
1-58 ~~the result of a hearing conducted~~] in accordance with the rules.

1-59 (e) The executive commissioner [~~department~~] shall by rule  
1-60 establish criteria to determine whether deficiencies from a  
1-61 facility's survey warrant action against an administrator. The  
1-62 criteria shall include a determination of whether the survey  
1-63 indicates substandard quality of care related to an act or failure

2-1 to act by the administrator, and whether a deficiency is related to  
 2-2 an act or failure to act by the administrator. If a deficiency on  
 2-3 which a disciplinary action against an administrator is initiated  
 2-4 or completed is not substantiated, the disciplinary action shall be  
 2-5 reversed.

2-6 SECTION 3. Subsections (c) and (d), Section 242.316, Health  
 2-7 and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84),  
 2-8 Acts of the 75th Legislature, Regular Session, 1997, are amended to  
 2-9 read as follows:

2-10 (c) If the person accepts the determination and the penalty  
 2-11 recommended by the department, or if the person fails to timely  
 2-12 respond to the notice, the department shall impose the recommended  
 2-13 penalty.

2-14 (d) If the person requests a hearing [~~or fails to respond~~  
 2-15 ~~timely to the notice~~], the department shall set a hearing and give  
 2-16 notice of the hearing to the person. The hearing shall be held in  
 2-17 accordance with the [~~department's~~] rules on contested case hearings  
 2-18 adopted by the executive commissioner.

2-19 SECTION 4. Subsections (a) and (d), Section 242.318, Health  
 2-20 and Safety Code, as added by Section 2.01, Chapter 1280 (S.B. 84),  
 2-21 Acts of the 75th Legislature, Regular Session, 1997, are amended to  
 2-22 read as follows:

2-23 (a) The board may revoke, suspend, or refuse to renew a  
 2-24 nursing facility administrator's license, assess an administrative  
 2-25 penalty, issue a written reprimand, require participation in  
 2-26 continuing education, or place an administrator on probation, after  
 2-27 due notice and the opportunity for a hearing, on proof of any of the  
 2-28 following grounds:

2-29 (1) the license holder has wilfully or repeatedly  
 2-30 violated a provision of this subchapter or a rule adopted under this  
 2-31 subchapter;

2-32 (2) the license holder has wilfully or repeatedly  
 2-33 acted in a manner inconsistent with the health and safety of the  
 2-34 residents of a facility of which the license holder is an  
 2-35 administrator;

2-36 (3) the license holder obtained or attempted to obtain  
 2-37 a license through misrepresentation or deceit or by making a  
 2-38 material misstatement of fact on a license application;

2-39 (4) the license holder's use of alcohol or drugs  
 2-40 creates a hazard to the residents of a facility;

2-41 (5) a judgment of a court of competent jurisdiction  
 2-42 finds that the license holder is mentally incapacitated;

2-43 (6) the license holder has been convicted in a court of  
 2-44 competent jurisdiction of a misdemeanor or felony involving moral  
 2-45 turpitude; [~~or~~]

2-46 (7) the license holder has been convicted in a court of  
 2-47 competent jurisdiction of an offense listed in Section 250.006; or

2-48 (8) the license holder has been negligent or  
 2-49 incompetent in the license holder's duties as a nursing facility  
 2-50 administrator.

2-51 (d) The board by rule shall adopt a broad schedule of  
 2-52 sanctions for violations under this subchapter. The board shall  
 2-53 use the schedule for any sanction imposed [~~as the result of a~~  
 2-54 ~~hearing conducted~~] in accordance with the rules.

2-55 SECTION 5. Subsections (c) and (d), Section 242.321, Health  
 2-56 and Safety Code, as added by Section 2.01, Chapter 1280 (S.B. 84),  
 2-57 Acts of the 75th Legislature, Regular Session, 1997, are amended to  
 2-58 read as follows:

2-59 (c) If the person accepts the determination and the penalty  
 2-60 recommended by the department, or if the person fails to timely  
 2-61 respond to the notice, the department shall impose the recommended  
 2-62 penalty.

2-63 (d) If the person requests a hearing [~~or fails to respond~~  
 2-64 ~~timely to the notice~~], the department shall set a hearing and give  
 2-65 notice of the hearing to the person. The hearing shall be held in  
 2-66 accordance with the [~~department's~~] rules on contested case hearings  
 2-67 adopted by the executive commissioner.

2-68 SECTION 6. The change in law made by this Act applies only  
 2-69 to a disciplinary action imposed on or after the effective date of

3-1 this Act. A disciplinary action imposed before that date is  
3-2 governed by the law in effect at the time the action was initiated,  
3-3 and the former law is continued in effect for that purpose.

3-4 SECTION 7. This Act takes effect immediately if it receives  
3-5 a vote of two-thirds of all the members elected to each house, as  
3-6 provided by Section 39, Article III, Texas Constitution. If this  
3-7 Act does not receive the vote necessary for immediate effect, this  
3-8 Act takes effect September 1, 2009.

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