

By: Hegar

S.B. No. 1415

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

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

(b) Not later than February 1, 2010, the board shall 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 this chapter in cases in which the board proposes to impose a sanction other than a reprimand or a denial, suspension, or revocation of a license. If the board determines the pilot program is feasible, the board shall develop and implement the pilot program not later than February 1, 2011. The pilot program must conclude not later than January 1, 2014.

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

1 license.

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

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

11 (2) if the person successfully meets the imposed
12 conditions, dismiss the complaint.

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

21 (f) The board may treat a deferred disciplinary action taken
22 against a nurse under this section as a prior disciplinary action
23 against the nurse when considering the imposition of a sanction for
24 a subsequent violation of this chapter or a rule or order adopted
25 under this chapter.

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

1 (h) The board shall appoint an advisory committee to assist
2 the board in overseeing the pilot program and its evaluation. The
3 committee must include representatives of public advocacy
4 organizations.

5 (i) This section expires September 1, 2014.

6 SECTION 2. 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
25 ACTION. If the executive director determines that a person has
26 committed a violation for which a corrective action may be imposed
27 under the guidelines adopted under Section 301.652(b), the

1 executive director may give written notice of the determination and
2 recommendation for corrective action to the person subject to the
3 corrective action. The notice may be given by certified mail. The
4 notice must:

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

9 Sec. 301.654. RESPONSE. Not later than the 20th day after
10 the date the person receives the notice under Section 301.653, the
11 person may:

- 12 (1) accept in writing the executive director's
13 determination and recommended corrective action; or
14 (2) reject the executive director's determination and
15 recommended corrective action.

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

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

- 24 (1) terminate proceedings under this subchapter; and
25 (2) dispose of the matter as a complaint under
26 Subchapter J.

27 Sec. 301.656. REPORT TO BOARD. The executive director

1 shall report periodically to the board on the corrective actions
2 imposed under this subchapter, including:

- 3 (1) the number of corrective actions imposed;
4 (2) the types of violations for which corrective
5 actions were imposed; and
6 (3) whether affected nurses accepted the corrective
7 actions.

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

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

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

17 SECTION 3. The changes in law made by this Act to Chapter
18 301, Occupations Code, apply to actions for violations under
19 Chapter 301 pending on the effective date of this Act or commenced
20 on or after the effective date of this Act.

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