

1-1 By: Hegar S.B. No. 1415
1-2 (In the Senate - Filed March 5, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 24, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 24, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1415 By: Deuell

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

1-10 relating to certain corrective actions by the Texas Board of
1-11 Nursing, including a pilot program on deferred disciplinary action;
1-12 providing corrective actions.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter D, Chapter 301, Occupations Code, is
1-15 amended by adding Section 301.1607 to read as follows:

1-16 Sec. 301.1607. PILOT PROGRAM ON DEFERRAL OF FINAL
1-17 DISCIPLINARY ACTION. (a) In this section, "deferred disciplinary
1-18 action" means a final disciplinary action against a person licensed
1-19 or regulated under this chapter that is deferred by the board as
1-20 provided by this section.

1-21 (b) Not later than February 1, 2010, the board shall
1-22 determine the feasibility of conducting a pilot program designed to
1-23 evaluate the efficacy and effect on the public's protection of
1-24 board deferral of disciplinary action against a person licensed or
1-25 regulated under this chapter in cases in which the board proposes to
1-26 impose a sanction other than a reprimand or a denial, suspension, or
1-27 revocation of a license. If the board determines the pilot program
1-28 is feasible, the board shall develop and implement the pilot
1-29 program not later than February 1, 2011. The pilot program must
1-30 conclude not later than January 1, 2014.

1-31 (c) The pilot program may not include cases in which the
1-32 board proposes to issue a reprimand or to deny, suspend, or revoke a
1-33 license.

1-34 (d) During the time the pilot program is implemented and for
1-35 any action or complaint for which the board proposes to impose a
1-36 sanction other than a reprimand or a denial, suspension, or
1-37 revocation of a license, the board may:

1-38 (1) defer final disciplinary action the board has
1-39 proposed against a person licensed or regulated under this chapter
1-40 if the person conforms to conditions imposed by the board,
1-41 including any condition the board could impose as a condition of
1-42 probation under Section 301.468; and

1-43 (2) if the person successfully meets the imposed
1-44 conditions, dismiss the complaint.

1-45 (e) Except as otherwise provided by this subsection, a
1-46 deferred disciplinary action by the board under the pilot program
1-47 is not confidential and is subject to disclosure in accordance with
1-48 Chapter 552, Government Code. If the person successfully meets the
1-49 conditions imposed by the board in deferring final disciplinary
1-50 action and the board dismisses the action or complaint, the
1-51 deferred disciplinary action of the board is confidential to the
1-52 same extent as a complaint filed under Section 301.466.

1-53 (f) The board may treat a deferred disciplinary action taken
1-54 against a nurse under this section as a prior disciplinary action
1-55 against the nurse when considering the imposition of a sanction for
1-56 a subsequent violation of this chapter or a rule or order adopted
1-57 under this chapter.

1-58 (g) The board may contract with a third party to evaluate
1-59 the pilot program established under this section.

1-60 (h) The board shall appoint an advisory committee to assist
1-61 the board in overseeing the pilot program and its evaluation. The
1-62 committee must include representatives of public advocacy
1-63 organizations.

2-1 (i) This section expires September 1, 2014.
2-2 SECTION 2. Chapter 301, Occupations Code, is amended by
2-3 adding Subchapter N to read as follows:

2-4 SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING

2-5 Sec. 301.651. DEFINITION. In this subchapter, "corrective
2-6 action" means a fine or remedial education imposed under Section
2-7 301.652.

2-8 Sec. 301.652. IMPOSITION OF CORRECTIVE ACTION. (a) The
2-9 board may impose a corrective action on a person licensed or
2-10 regulated under this chapter who violates this chapter or a rule or
2-11 order adopted under this chapter. The corrective action:

2-12 (1) may be a fine, remedial education, or any
2-13 combination of a fine or remedial education;

2-14 (2) is not a disciplinary action under Subchapter J;
2-15 and

2-16 (3) is subject to disclosure only to the extent a
2-17 complaint is subject to disclosure under Section 301.466.

2-18 (b) The board by rule shall adopt guidelines for the types
2-19 of violations for which a corrective action may be imposed.

2-20 Sec. 301.653. REPORT AND NOTICE OF VIOLATION AND CORRECTIVE
2-21 ACTION. If the executive director determines that a person has
2-22 committed a violation for which a corrective action may be imposed
2-23 under the guidelines adopted under Section 301.652(b), the
2-24 executive director may give written notice of the determination and
2-25 recommendation for corrective action to the person subject to the
2-26 corrective action. The notice may be given by certified mail. The
2-27 notice must:

2-28 (1) include a brief summary of the alleged violation;

2-29 (2) state the recommended corrective action; and

2-30 (3) inform the person of the person's options in
2-31 responding to the notice.

2-32 Sec. 301.654. RESPONSE. Not later than the 20th day after
2-33 the date the person receives the notice under Section 301.653, the
2-34 person may:

2-35 (1) accept in writing the executive director's
2-36 determination and recommended corrective action; or

2-37 (2) reject the executive director's determination and
2-38 recommended corrective action.

2-39 Sec. 301.655. ACTION FOLLOWING RESPONSE. (a) If the
2-40 person accepts the executive director's determination and
2-41 satisfies the recommended corrective action, the case is closed.

2-42 (b) If the person does not accept the executive director's
2-43 determination and recommended corrective action as originally
2-44 proposed or as modified by the board or fails to respond in a timely
2-45 manner to the executive director's notice as provided by Section
2-46 301.654, the executive director shall:

2-47 (1) terminate proceedings under this subchapter; and

2-48 (2) dispose of the matter as a complaint under
2-49 Subchapter J.

2-50 Sec. 301.656. REPORT TO BOARD. The executive director
2-51 shall report periodically to the board on the corrective actions
2-52 imposed under this subchapter, including:

2-53 (1) the number of corrective actions imposed;

2-54 (2) the types of violations for which corrective
2-55 actions were imposed; and

2-56 (3) whether affected nurses accepted the corrective
2-57 actions.

2-58 Sec. 301.657. EFFECT ON ACCEPTANCE OF CORRECTIVE ACTION.

2-59 (a) Except to the extent provided by this section, a person's
2-60 acceptance of a corrective action under this subchapter does not
2-61 constitute an admission of a violation but does constitute a plea of
2-62 nolo contendere.

2-63 (b) The board may treat a person's acceptance of corrective
2-64 action as an admission of a violation if the board imposes a
2-65 sanction on the person for a subsequent violation of this chapter or
2-66 a rule or order adopted under this chapter.

2-67 SECTION 3. The changes in law made by this Act to Chapter
2-68 301, Occupations Code, apply to actions for violations under
2-69 Chapter 301 pending on the effective date of this Act or commenced

3-1 on or after the effective date of this Act.

3-2 SECTION 4. This Act takes effect September 1, 2009.

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