

BILL ANALYSIS

C.S.S.B. 1058
By: Nelson
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

During each legislative interim, the Texas Board of Nursing and Texas Nurses Association review the statutory provisions governing the practice of nursing to identify possible issues and to make recommendations to clarify and improve those governing provisions. C.S.S.B. 1058 seeks to address the issues identified by those entities and incorporate the most recent recommendations.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Board of Nursing in SECTIONS 2, 3, 4, and 5 of this bill.

ANALYSIS

C.S.S.B. 1058 amends the Occupations Code to specify that the Nursing Practice Act does not apply to an act performed by a person licensed by a state agency other than the Texas Board of Nursing if the act is authorized by the statute under which the person is licensed, unless the person also holds a nursing license and the act is within the practice of nursing, in which case the board is authorized to take action against that license based on that act.

C.S.S.B. 1058 requires the board to adopt rules regarding the provision of pain management services by advanced practice nurses. The bill requires, rather than authorizes, the board to develop by rule a system for obtaining criminal history record information for a person accepted for enrollment, rather than for an applicant for a license who enrolls or plans to enroll, in a nursing educational program that prepares the person for initial licensure as a registered nurse by requiring such a person to submit a complete set of fingerprints to the board. The bill extends the applicability of those provisions to include obtaining criminal history record information by such means for persons enrolled in a program that prepares the person for licensure as a vocational nurse and authorizes the board to develop a similar system for an applicant for enrollment in a nursing educational program.

C.S.S.B. 1058 authorizes the board to file a petition for a declaratory order as to a person's eligibility for a license under the Nursing Practice Act based on the results of the criminal history record information check performed on a person accepted or applying for enrollment in certain nursing educational programs. The bill requires the board by rule to adopt requirements for such a petition and determination of eligibility and requires the rules to identify the criminal offenses that constitute grounds for the board to file the petition and describe the documents required by the board to make a determination of license eligibility. The bill requires the board to make a determination of license eligibility not later than the 120th day after the date the person submits the required documents to the board.

C.S.S.B. 1058, in provisions that apply only to a licensing period that begins on or after January 1, 2014, requires a license holder, as part of a continuing competency program, to complete at least two hours of continuing education relating to nursing jurisprudence and nursing ethics

before the end of every third two-year licensing period and requires a license holder whose practice includes older adult or geriatric populations, as part of such a continuing competency program, to complete at least two hours of continuing education relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult or geriatric populations. The bill requires the board to adopt rules implementing these continuing education requirements in accordance with statutory guidelines for targeted continuing education. The bill prohibits the board from requiring a license holder to complete more than four hours of continuing education and from requiring a license holder whose practice includes older adult or geriatric populations to complete more than six hours of continuing education.

C.S.S.B. 1058 specifies that a person is subject to denial of a license or to disciplinary action for the revocation, suspension, or denial of, or any other action relating to the person's license or privilege to practice nursing under federal law.

C.S.S.B. 1058 authorizes the board, in addition to or instead of imposing a disciplinary action on a person determined to have committed a prohibited act, to require such person to abstain from the consumption of alcohol or the use of drugs and to submit to random periodic screening for alcohol or drug use. The bill exempts a temporary license suspension for drug and alcohol abuse from the prohibition against the board taking any license-related disciplinary action without service of notice and an opportunity for the license holder to show compliance with the law.

C.S.S.B. 1058 specifies that, if the board orders a nurse to participate in a peer assistance program approved by the board, the complaint, filing of formal charges, nature of those charges, final board order, and disciplinary proceedings are confidential and are subject to disclosure only to the same extent as information regarding a complaint is subject to disclosure or in a subsequent matter relating to the board order or a subsequent violation of the Nursing Practice Act or a board rule.

C.S.S.B. 1058 repeals provisions relating to a pilot program for the deferral of final disciplinary action by the board and, in provisions that apply to a violation that occurs before, on, or after the bill's effective date, instead authorizes the board, for any action or complaint for which the board proposes to impose on a person a sanction other than a reprimand or a denial, suspension, or revocation of a license, to defer the final disciplinary action proposed by the board if the person conforms to conditions imposed by the board, including any condition the board could impose as a condition of probation. The bill authorizes the board to dismiss the complaint if the person successfully meets the imposed conditions.

C.S.S.B. 1058 specifies that a deferred action by the board is not confidential and is subject to disclosure in accordance with state public information laws unless the person successfully meets the conditions imposed by the board in deferring final action and the board dismisses the action or complaint, in which case the deferred action of the board is confidential to the same extent as a complaint concerning a nurse is confidential.

C.S.S.B. 1058 requires the executive director of the board to report periodically to the board on the deferred actions, as well as on corrective actions, imposed on an applicable person and removes the requirement for the executive director to report to the board on whether affected nurses accepted the corrective actions.

C.S.S.B. 1058 makes statutory provisions relating to the effect of an acceptance of a corrective action applicable to an acceptance of a deferred action and authorizes the board to consider a corrective or deferred action taken against a person to be a prior disciplinary action under the Nursing Practice Act when imposing a sanction on the person for a subsequent violation of the act or a rule or order adopted under the act.

C.S.S.B. 1058 repeals Section 301.1607, Occupations Code.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 1058 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subsection (a), Section 301.004, Occupations Code, is amended.

No equivalent provision.

SECTION 2. Subsection (c), Section 301.2511, Occupations Code, is amended.

SECTION 3. Section 301.257, Occupations Code, is amended.

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Subchapter D, Chapter 301, Occupations Code, is amended by adding Section 301.1546 to read as follows:

Sec. 301.1546. RULES REGARDING PAIN MANAGEMENT. The board shall adopt rules regarding the provision of pain management services by advanced practice nurses.

SECTION 3. Same as engrossed version.

SECTION 4. Same as engrossed version.

SECTION 5. Subchapter G, Chapter 301, Occupations Code, is amended by adding Sections 301.305 and 301.307 to read as follows:

Sec. 301.305. CONTINUING EDUCATION IN NURSING JURISPRUDENCE AND NURSING ETHICS. (a) As part of a continuing competency program under Section 301.303, a license holder shall complete at least two hours of continuing education relating to nursing jurisprudence and nursing ethics before the end of every third two-year licensing period.

(b) The board shall adopt rules implementing the requirement under Subsection (a) in accordance with the guidelines for targeted continuing education under Section 301.303(g).

(c) The board may not require a license holder to complete more than four hours of continuing education under this section.

Sec. 301.307. CONTINUING EDUCATION IN OLDER ADULT OR GERIATRIC CARE. (a) As part of a continuing

competency program under Section 301.303, a license holder whose practice includes older adult or geriatric populations shall complete at least two hours of continuing education relating to older adult or geriatric populations or maintain certification in an area of practice relating to older adult or geriatric populations.

(b) The board shall adopt rules implementing the requirement under Subsection (a) in accordance with the guidelines for targeted continuing education under Section 301.303(g).

(c) The board may not require a license holder to complete more than six hours of continuing education under this section.

SECTION 4. Subsection (b), Section 301.452, Occupations Code, is amended.

SECTION 5. Subsection (b), Section 301.453, Occupations Code, is amended.

SECTION 6. Subsection (a), Section 301.454, Occupations Code, is amended.

SECTION 7. Subsection (a), Section 301.458, Occupations Code, is amended.

SECTION 8. Subsection (a), Section 301.465, Occupations Code, is amended to read as follows:

(a) Notwithstanding Section 2001.089, Government Code, the [The] board may request issuance of a subpoena to be served by [in any manner authorized by law, including] personal service by a board investigator or [and service] by certified mail.

SECTION 9. Section 301.466, Occupations Code, is amended.

SECTION 10. The heading to Subchapter N, Chapter 301, Occupations Code, is amended.

SECTION 11. Section 301.651, Occupations Code, is amended.

SECTION 12. Subsection (b), Section 301.655, Occupations Code, is amended.

SECTION 13. Subchapter N, Chapter 301, Occupations Code, is amended.

SECTION 6. Same as engrossed version.

SECTION 7. Same as engrossed version.

SECTION 8. Same as engrossed version.

SECTION 9. Same as engrossed version.

SECTION 10. Subsection (a), Section 301.465, Occupations Code, is amended to read as follows:

(a) Notwithstanding Section 2001.089, Government Code, the [The] board may request issuance of a subpoena to be served in any manner authorized by law, including personal service by a board investigator or [and service] by certified mail.

SECTION 11. Same as engrossed version.

SECTION 12. Same as engrossed version.

SECTION 13. Same as engrossed version.

SECTION 14. Same as engrossed version.

SECTION 15. Same as engrossed version.

SECTION 14. Section 301.656, Occupations Code, is amended.

SECTION 15. Section 301.657, Occupations Code, is amended.

SECTION 16. Section 301.1607, Occupations Code, is repealed.

SECTION 17. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Chapter 301, Occupations Code, apply only to a violation that occurs on or after the effective date of this Act. A violation that occurs before that date is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act to Subchapter N, Chapter 301, Occupations Code, shall apply to a violation that occurs before the effective date of this Act if the complaint relating to that violation remains pending on that date.

SECTION 18. This Act takes effect September 1, 2013.

SECTION 16. Same as engrossed version.

SECTION 17. Same as engrossed version.

SECTION 18. Same as engrossed version.

SECTION 19. (a) Except as provided by Subsection (b) of this section, the changes in law made by this Act to Chapter 301, Occupations Code, apply only to a violation that occurs on or after the effective date of this Act. A violation that occurs before that date is governed by the law in effect on the date the violation occurred, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act to Subchapter N, Chapter 301, Occupations Code, apply to a violation that occurs before, on, or after the effective date of this Act.

(c) Sections 301.305 and 301.307, Occupations Code, as added by this Act, apply only to a licensing period that begins on or after January 1, 2014.

SECTION 20. Same as engrossed version.