

By: King of Taylor

H.B. No. 2358

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the regulation of the practice of nursing.

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

4 SECTION 1. Section 301.004(a), Occupations Code, is amended  
5 to read as follows:

6 (a) This chapter does not apply to:

7 (1) gratuitous nursing care of the sick that is  
8 provided by a friend;

9 (2) nursing care provided during a disaster under the  
10 state emergency management plan adopted under Section 418.042,  
11 Government Code, if the person providing the care does not hold the  
12 person out as a nurse unless the person is licensed in another  
13 state;

14 (3) nursing care in which treatment is solely by  
15 prayer or spiritual means;

16 (4) an act performed by a person under the delegated  
17 authority of a person licensed by the Texas Medical Board;

18 (5) an act performed by a person licensed by another  
19 state agency if the act is authorized by the statute under which the  
20 person is licensed unless the person also holds a license under this  
21 chapter and the act is within the practice of nursing;

22 (6) the practice of nursing that is incidental to a  
23 program of study by a student enrolled in a nursing education  
24 program approved under Section 301.157(d) leading to an initial

1 license as a nurse; or

2 (7) the practice of nursing by a person licensed in  
3 another state who is in this state on a nonroutine basis for a  
4 period not to exceed 72 hours to:

5 (A) provide care to a patient being transported  
6 into, out of, or through this state;

7 (B) provide nursing consulting services; or

8 (C) attend or present a continuing nursing  
9 education program.

10 SECTION 2. Section 301.2511(c), Occupations Code, is  
11 amended to read as follows:

12 (c) The board by rule shall ~~[may]~~ develop a system for  
13 ~~[initiating the process of]~~ obtaining criminal history record  
14 information for a person accepted for enrollment in a nursing  
15 ~~[applicants for a license under this chapter by requiring persons~~  
16 ~~who enroll or plan to enroll in an]~~ educational program that  
17 prepares the ~~[a]~~ person for initial licensure ~~[a license]~~ as a  
18 registered or vocational nurse by requiring the person to submit to  
19 the board a set of fingerprints that meets the requirements of  
20 Subsection (a). The board may develop a similar system for an  
21 applicant for enrollment in a nursing educational program. The  
22 board may require payment of a fee by a person who is required to  
23 submit a set of fingerprints under this subsection.

24 SECTION 3. Section 301.257, Occupations Code, is amended by  
25 adding Subsections (j) and (k) to read as follows:

26 (j) The board may file a petition under this section based  
27 on the results of a criminal history record information check

1 conducted under Section 301.2511. The board by rule shall adopt  
2 requirements for the petition and determination under this  
3 subsection. The rules must:

4 (1) identify the criminal offenses that constitute  
5 grounds for the board to file the petition; and

6 (2) describe the documents required by the board to  
7 make a determination of license eligibility.

8 (k) The board shall make a determination of license  
9 eligibility under Subsection (j) not later than the 120th day after  
10 the date the person submits the required documents to the board  
11 under that subsection.

12 SECTION 4. Section 301.452(b), Occupations Code, is amended  
13 to read as follows:

14 (b) A person is subject to denial of a license or to  
15 disciplinary action under this subchapter for:

16 (1) a violation of this chapter, a rule or regulation  
17 not inconsistent with this chapter, or an order issued under this  
18 chapter;

19 (2) fraud or deceit in procuring or attempting to  
20 procure a license to practice professional nursing or vocational  
21 nursing;

22 (3) a conviction for, or placement on deferred  
23 adjudication community supervision or deferred disposition for, a  
24 felony or for a misdemeanor involving moral turpitude;

25 (4) conduct that results in the revocation of  
26 probation imposed because of conviction for a felony or for a  
27 misdemeanor involving moral turpitude;

1           (5) use of a nursing license, diploma, or permit, or  
2 the transcript of such a document, that has been fraudulently  
3 purchased, issued, counterfeited, or materially altered;

4           (6) impersonating or acting as a proxy for another  
5 person in the licensing examination required under Section 301.253  
6 or 301.255;

7           (7) directly or indirectly aiding or abetting an  
8 unlicensed person in connection with the unauthorized practice of  
9 nursing;

10          (8) revocation, suspension, or denial of, or any other  
11 action relating to, the person's license or privilege to practice  
12 nursing in another jurisdiction or under federal law;

13          (9) intemperate use of alcohol or drugs that the board  
14 determines endangers or could endanger a patient;

15          (10) unprofessional or dishonorable conduct that, in  
16 the board's opinion, is likely to deceive, defraud, or injure a  
17 patient or the public;

18          (11) adjudication of mental incompetency;

19          (12) lack of fitness to practice because of a mental or  
20 physical health condition that could result in injury to a patient  
21 or the public; or

22          (13) failure to care adequately for a patient or to  
23 conform to the minimum standards of acceptable nursing practice in  
24 a manner that, in the board's opinion, exposes a patient or other  
25 person unnecessarily to risk of harm.

26          SECTION 5. Section 301.453(b), Occupations Code, is amended  
27 to read as follows:

1 (b) In addition to or instead of an action under Subsection  
2 (a), the board, by order, may require the person to:

3 (1) submit to care, counseling, or treatment by a  
4 health provider designated by the board as a condition for the  
5 issuance or renewal of a license;

6 (2) participate in a program of education or  
7 counseling prescribed by the board, including a program of remedial  
8 education;

9 (3) practice for a specified period under the  
10 direction of a registered nurse or vocational nurse designated by  
11 the board; ~~[or]~~

12 (4) perform public service the board considers  
13 appropriate; or

14 (5) abstain from the consumption of alcohol or the use  
15 of drugs and submit to random periodic screening for alcohol or drug  
16 use.

17 SECTION 6. Section 301.454(a), Occupations Code, is amended  
18 to read as follows:

19 (a) Except in the case of a temporary suspension authorized  
20 under Section 301.455 or 301.4551 or an action taken in accordance  
21 with an agreement between the board and a license holder, the board  
22 may not take any ~~[initiate a]~~ disciplinary action relating to a  
23 license unless:

24 (1) the board has served notice to the license holder  
25 of the facts or conduct alleged to warrant the intended action; and

26 (2) the license holder has been given an opportunity,  
27 in writing or through an informal meeting, to show compliance with

1 all requirements of law for the retention of the license.

2 SECTION 7. Section 301.458(a), Occupations Code, is amended  
3 to read as follows:

4 (a) Unless there is an agreed disposition of the complaint  
5 under Section 301.463, ~~[and]~~ if probable cause is found under  
6 Section 301.457(e)(2), the board or the board's authorized  
7 representative shall file ~~[initiate proceedings by filing]~~ formal  
8 charges against the nurse.

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

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

15 SECTION 9. Section 301.466, Occupations Code, is amended  
16 by amending Subsection (a) and adding Subsection (d) to read as  
17 follows:

18 (a) A complaint and investigation concerning a nurse under  
19 this subchapter, ~~[and]~~ all information and material compiled by the  
20 board in connection with the complaint and investigation, and the  
21 information described by Subsection (d) are:

22 (1) confidential and not subject to disclosure under  
23 Chapter 552, Government Code; and

24 (2) not subject to disclosure, discovery, subpoena, or  
25 other means of legal compulsion for release to anyone other than the  
26 board or a board employee or agent involved in license holder  
27 discipline.

1        (d) Notwithstanding Subsection (c), if the board orders a  
2 nurse to participate in a peer assistance program approved by the  
3 board under Section 467.003, Health and Safety Code, the complaint,  
4 filing of formal charges, nature of those charges, final board  
5 order, and disciplinary proceedings are subject to disclosure:

6            (1) only to the same extent as information regarding a  
7 complaint is subject to disclosure under Subsection (b); or

8            (2) in a subsequent matter relating to the board order  
9 or a subsequent violation of this chapter or a board rule.

10        SECTION 10. The heading to Subchapter N, Chapter 301,  
11 Occupations Code, is amended to read as follows:

12        SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING AND DEFERRED

13                                    DISCIPLINARY ACTION

14        SECTION 11. Section 301.651, Occupations Code, is amended  
15 to read as follows:

16        Sec. 301.651. DEFINITIONS        [~~DEFINITION~~].        In        this  
17 subchapter:

18            (1) "Corrective [~~, "corrective~~] action" means a fine  
19 or remedial education imposed under Section 301.652.

20            (2) "Deferred disciplinary action" means a final  
21 disciplinary action against a person licensed or regulated under  
22 this chapter that is deferred by the board as provided by this  
23 subchapter.

24        SECTION 12. Section 301.655(b), Occupations Code, is  
25 amended to read as follows:

26            (b) If the person does not accept the executive director's  
27 determination and recommended corrective action as originally

1 proposed or as modified by the board or fails to respond in a timely  
2 manner to the executive director's notice as provided by Section  
3 301.654, the executive director shall:

4 (1) terminate corrective action proceedings [~~under~~  
5 ~~this subchapter~~]; and

6 (2) dispose of the matter as a complaint under  
7 Subchapter J.

8 SECTION 13. Subchapter N, Chapter 301, Occupations Code, is  
9 amended by adding Section 301.6555 to read as follows:

10 Sec. 301.6555. DEFERRED DISCIPLINARY ACTION. (a) For any  
11 action or complaint for which the board proposes to impose on a  
12 person a sanction other than a reprimand or a denial, suspension, or  
13 revocation of a license, the board may:

14 (1) defer the final disciplinary action the board has  
15 proposed if the person conforms to conditions imposed by the board,  
16 including any condition the board could impose as a condition of  
17 probation under Section 301.468; and

18 (2) if the person successfully meets the imposed  
19 conditions, dismiss the complaint.

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



1 SECTION 14. Section 301.656, Occupations Code, is amended  
2 to read as follows:

3 Sec. 301.656. REPORT TO BOARD. The executive director  
4 shall report periodically to the board on the corrective or  
5 deferred disciplinary actions imposed under this subchapter,  
6 including:

7 (1) the number of [~~corrective~~] actions imposed; and

8 (2) the types of violations for which [~~corrective~~]  
9 actions were imposed[~~, and~~

10 [~~(3) whether affected nurses accepted the corrective~~  
11 ~~actions~~].

12 SECTION 15. Section 301.657, Occupations Code, is amended  
13 to read as follows:

14 Sec. 301.657. EFFECT ON ACCEPTANCE OF CORRECTIVE OR  
15 DEFERRED DISCIPLINARY ACTION. (a) Except to the extent provided by  
16 this section, a person's acceptance of a corrective or deferred  
17 disciplinary action under this subchapter does not constitute an  
18 admission of a violation but does constitute a plea of nolo  
19 contendere.

20 (b) The board may treat a person's acceptance of corrective  
21 or deferred disciplinary action as an admission of a violation if  
22 the board imposes a sanction on the person for a subsequent  
23 violation of this chapter or a rule or order adopted under this  
24 chapter.

25 (c) The board may consider a corrective or deferred  
26 disciplinary action taken against a person to be a prior  
27 disciplinary action under this chapter when imposing a sanction on

1 the person for a subsequent violation of this chapter or a rule or  
2 order adopted under this chapter.

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

5 SECTION 17. The changes in law made by this Act to Chapter  
6 301, Occupations Code, apply only to a violation that occurs on or  
7 after the effective date of this Act. A violation that occurs before  
8 that date is governed by the law in effect on the date the violation  
9 occurred, and the former law is continued in effect for that  
10 purpose.

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