

- SUBJECT:** Texas Board of Nursing corrective actions and pilot program
- COMMITTEE:** Public Health — committee substitute recommended
- VOTE:** 8 ayes — Kolkhorst, Naishtat, Coleman, J. Davis, Gonzales, Laubenberg, McReynolds, Zerwas
- 0 nays
- 3 absent — Hopson, S. King, Truitt
- WITNESSES:** For — Cindy Zolnierek, Texas Nurses Association; (*Registered, but did not testify*: Elizabeth Sjoberg, Texas Hospital Association; Lynda Woolbert, Coalition for Nurses in Advanced Practice)
- Against — None
- On — (*Registered, but did not testify*: James “Dusty” Johnston, Texas Board of Nursing)
- BACKGROUND:** Under Occupations Code, sec. 301.466, a complaint and investigation concerning a licensed nurse are confidential and not subject to disclosure under Government Code, ch. 552, or other forms of disclosure, except that the information may be disclosed to:
- a person involved with the board in a disciplinary action against the nurse;
  - a nursing licensing or disciplinary board in another state;
  - a peer assistance program;
  - a law enforcement agency; or
  - an individual engaged in bona fide research, if all identifying information has been deleted.
- There are approximately 300,000 licensed nurses in Texas. Last year, approximately 9,500 reports or complaints were received by the Board of Nursing (BON) regarding activities of licensees. Of these, approximately 2,000 were resolved with disciplinary action. Of the approximately 7,000 remaining, many were non-jurisdictional, or did not apply to nurses and were referred to the appropriate agency, many were closed without action,

but approximately 2,000 were not resolved through informal settlement and remain open. Approximately 120 were of a serious nature and were placed with the State Office of Administrative Hearings (SOAH).

Of the 4,000 resolved and unresolved actions, many involved minor incidents resulting in fines, such as failure to comply with continuing education requirements or failure to renew a license in a timely manner. These violations of statutory requirements result in a “disciplinary action,” but are not of a serious enough nature to affect licensure of a nurse.

Currently, the Board of Nursing’s only option for addressing these lesser incidents is to either dismiss the case or pursue disciplinary action against the nurse, which remains on the nurse’s permanent record. Many nurses simply comply and pay their fine and the report is, thereby, settled with a “disciplinary action” or fine. Others fear the stigma of a “disciplinary action” being associated with their record and seek a hearing with SOAH or other alternatives.

DIGEST:

CSHB 1128 would amend Occupations Code, ch. 301 to allow the Board of Nursing to impose “corrective action” upon licensed nurses. Under the bill, corrective action:

- could be a fine, remedial education, or any combination of a fine or remedial education;
- would not be a disciplinary action; and
- would be subject to disclosure only to the extent a complaint is subject to disclosure under sec. 301.466.

If the executive director determined that an individual committed a violation for which a corrective action could be imposed, the executive director would provide written notice by certified mail, including a brief summary of the alleged violation, the recommended corrective action, and the individual’s options in responding to the notice. Within 20 days of receipt of the notice, the individual could accept the recommended corrective action in writing, or reject the determination and recommended corrective action.

If the individual accepted the determination and satisfied the recommended corrective action, the case would be closed, and the individual’s acceptance of the corrective action would not constitute an admission of a violation. If the individual did not accept the determination

and recommended corrective action or failed to respond in a timely manner, the matter would be disposed of as a complaint under Subchapter J, or according to the current system.

In addition, CSHB 1128 would create a pilot program on “deferred disciplinary action,” meaning a final disciplinary action against a licensed nurse would be deferred, or dismissed, by the board if the individual conformed to the conditions imposed by the board, and successfully met the imposed conditions. If the individual successfully met the conditions the deferred disciplinary action would be confidential to the same extent as a complaint filed under sec. 301.466.

The pilot program would be designed to evaluate the efficacy and effect on the public’s protection of board deferral of disciplinary action against a licensed nurse in cases in which the board proposed to issue a sanction other than a reprimand or to deny, suspend, or revoke a license. If the board determined the pilot program was feasible, the board would implement the program no later than February 1, 2011, and conclude the program no later than January 1, 2014.

The bill would take effect September 1, 2009, and changes made by the bill would apply to actions pending or commenced on the effective date of the bill.