(2) with the consent of the person who is the subject of the criminal history record information.

SECTION 5. This Act takes effect September 1, 2013.

Passed the Senate on April 23, 2013: Yeas 31, Nays 0; passed the House on May 22, 2013: Yeas 148, Nays 0, one present not voting.

Approved June 14, 2013.

Effective September 1, 2013.

CHAPTER 1189

S.B. No. 1058

AN ACT

relating to the regulation of the practice of nursing.

Be it enacted by the Legislature of the State of Texas:

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

(a) This chapter does not apply to:

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

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

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

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

(5) an act performed by a person licensed by another state agency if the act is authorized by the statute under which the person is licensed except that if the person also holds a license under this chapter and the act is within the practice of nursing, the board may take action against that license based on that act;

(6) the practice of nursing that is incidental to a program of study by a student enrolled in a nursing education program approved under Section 301.157(d) leading to an initial license as a nurse; or

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

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

(B) provide nursing consulting services; or

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

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

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

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

(j) The board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.

(k) The board may require payment of a fee by a person who is required to submit a set of fingerprints under this subsection.
(j) The board may file a petition under this section based on the results of a criminal history record information check conducted under Section 301.2511. The board by rule shall adopt requirements for the petition and determination under this subsection. The rules must:

1. identify the criminal offenses that constitute grounds for the board to file the petition; and
2. describe the documents required by the board to make a determination of license eligibility.

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

SECTION 4. 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 5. Subsection (b), Section 301.452, Occupations Code, is amended to read as follows:

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

1. a violation of this chapter, a rule or regulation not inconsistent with this chapter, or an order issued under this chapter;
2. fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing;
3. a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude;
4. conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude;
5. use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered;
6. impersonating or acting as a proxy for another person in the licensing examination required under Section 301.253 or 301.255;
7. directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing;
8. revocation, suspension, or denial of, or any other action relating to, the person’s license or privilege to practice nursing in another jurisdiction or under federal law;
9. intemperate use of alcohol or drugs that the board determines endangers or could endanger a patient;
unprofessional or dishonorable conduct that, in the board's opinion, is likely to deceive, defraud, or injure a patient or the public;

(11) adjudication of mental incompetency;

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

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

SECTION 6. Subsection (b), Section 301.453, Occupations Code, is amended to read as follows:

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

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

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

(3) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the board;

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

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

SECTION 7. Subsection (a), Section 301.454, Occupations Code, is amended to read as follows:

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

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

(2) the license holder has been given an opportunity, in writing or through an informal meeting, to show compliance with all requirements of law for the retention of the license.

SECTION 8. Subsection (a), Section 301.458, Occupations Code, is amended to read as follows:

(a) Unless there is an agreed disposition of the complaint under Section 301.463, if probable cause is found under Section 301.457(e)(2), the board or the board's authorized representative shall file formal charges against the nurse.

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

(a) Notwithstanding Section 2001.089, Government Code, 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 certified mail.

SECTION 10. Section 301.466, Occupations Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

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

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

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

(d) Notwithstanding Subsection (c), if the board orders a nurse to participate in a peer assistance program approved by the board under Section 467.005, Health and Safety Code,
the complaint, filing of formal charges, nature of those charges, final board order, and disciplinary proceedings are subject to disclosure:

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

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

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

SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING AND DEFERRED ACTION

SECTION 12. Section 301.651, Occupations Code, is amended to read as follows:

Sec. 301.651. DEFINITIONS [DEFINITION]. In this subchapter:

(1) "Corrective action" means a fine or remedial education imposed under Section 301.652.

(2) "Deferred action" means an action against a person licensed or regulated under this chapter that is deferred by the board as provided by this subchapter.

SECTION 13. Subsection (b), Section 301.655, Occupations Code, is amended to read as follows:

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

(1) terminate corrective action proceedings under this subchapter; and

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

SECTION 14. Subchapter N, Chapter 301, Occupations Code, is amended by adding Section 301.6555 to read as follows:

Sec. 301.6555. DEFERRED ACTION. (a) 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, the board may:

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

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

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

SECTION 15. Section 301.656, Occupations Code, is amended to read as follows:

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

(1) the number of corrective actions imposed; and

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

(3) whether affected persons accepted the corrective actions.

SECTION 16. Section 301.657, Occupations Code, is amended to read as follows:

Sec. 301.657. EFFECT ON ACCEPTANCE OF CORRECTIVE OR DEFERRED ACTION. (a) Except to the extent provided by this section, a person's acceptance of a corrective or deferred action under this subchapter does not constitute an admission of a violation but does constitute a plea of nolo contendere.
(b) The board may treat a person's acceptance of corrective or deferred action as an admission of a violation if the board imposes a sanction on the person for a subsequent violation of this chapter or a rule or order adopted under this chapter.

(c) The board may consider a corrective or deferred action taken against a person to be a prior disciplinary action under this chapter when imposing a sanction on the person for a subsequent violation of this chapter or a rule or order adopted under this chapter.

SECTION 17. Section 301.1607, Occupations Code, is repealed.

SECTION 18. (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 19. This Act takes effect September 1, 2013.

Passed the Senate on March 27, 2013: Yeas 30, Nays 0; the Senate concurred in House amendments on May 25, 2013: Yeas 30, Nays 0; passed the House, with amendments, on May 22, 2013: Yeas 145, Nays 3, two present not voting.

Approved June 14, 2013.

Effective September 1, 2013.

CHAPTER 1190

S.B. No. 1090

AN ACT

relating to the manufacture, distribution, sale, and provision of alcoholic beverages and the regulation of those activities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1.04, Alcoholic Beverage Code, is amended by amending Subdivision (15) and adding Subdivision (26) to read as follows:

(15) "Beer" means a malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, and does not include a beverage designated by label or otherwise by a name other than beer.

(26) "Criminal negligence" has the meaning assigned by Section 6.03, Penal Code.

SECTION 2. Section 5.11, Alcoholic Beverage Code, is amended to read as follows:

Sec. 5.11. ADMINISTRATOR. (a) The commission shall appoint an administrator to serve at its will and, subject to its supervision, administer this code. Unless the commission orders otherwise, the administrator shall be manager, secretary, and custodian of all records. The administrator shall devote the administrator's entire time to the office and shall receive a salary as appropriated by the legislature.

(b) The administrator is also known as the executive director.

SECTION 3. Section 5.13, Alcoholic Beverage Code, is amended to read as follows:

Sec. 5.13. ASSISTANT ADMINISTRATOR. (a) The administrator shall appoint an assistant administrator. The assistant administrator must meet the same qualifications as the administrator. The assistant administrator shall take the constitutional oath of office. In the absence of the administrator, or in case of the administrator's inability to act, the assistant administrator shall perform the duties conferred on the administrator by law or delegated to the administrator by the commission. If there is a vacancy in the office of