

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1415  
By: Hegar  
Health & Human Services  
4/21/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The 80th Legislature, Regular Session, 2007, passed S.B. 993, authored by Senator Nelson and sponsored by Representative McReynolds, in order to promote a less punitive regulatory environment for nurses who have committed minor violations and to have the Texas Board of Nursing (board) focus its disciplinary efforts and resources on nurses whose continued practice poses a risk of harm to patients. This legislation is in keeping with the recommendations of the Institute of Medicine's report, *To Err Is Human and Keeping Patients Safe: Transforming the Work Environment of Nurses*, which concluded that patient safety is best promoted by a regulatory environment which focuses more on system issues and less on individual blame for minor infractions.

Deferred disciplinary action is a decision made by the board to defer taking final disciplinary action against a nurse, and if the nurse meets certain conditions, dismissing the complaint. This bill would build on S.B. 993 by directing the board to determine the feasibility of conducting a pilot program to evaluate a model of deferred disciplinary action for minor violations, and if determined to be feasible, to conduct such a pilot program.

C.S.S.B. 1415 amends current law relating to certain corrective actions by the Texas Board of Nursing, including a pilot program on deferred disciplinary action, and provides corrective actions.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Board of Nursing in SECTION 2 (Section 301.652, Occupations code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter D, Chapter 301, Occupations Code, by adding Section 301.1607, as follows:

Sec. 301.1607. PILOT PROGRAM ON DEFERRAL OF FINAL DISCIPLINARY ACTION. (a) Defines "deferred disciplinary action."

(b) Requires the Texas Board of Nursing (board), not later than February 1, 2010, to determine the feasibility of conducting a pilot program designed to evaluate the efficacy and effect on the public's protection of board deferral of disciplinary action against a person licensed or regulated under this chapter in cases in which the board proposes to impose a sanction other than a reprimand or a denial, suspension, or revocation of a license. Requires the board, if it determines the pilot program is feasible, to develop and implement the pilot program not later than February 1, 2011. Requires that the pilot program conclude not later than January 1, 2014.

(c) Prohibits the pilot program from including cases in which the board proposes to issue a reprimand or to deny, suspend, or revoke a license.

(d) Authorizes the board, during the time the pilot program is implemented and for any action or complaint for which the board proposes to impose a sanction other than a reprimand or a denial, suspension, or revocation of a license, to defer

final disciplinary action the board has proposed against a person licensed or regulated under this chapter 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 (Probation), and if the person successfully meets the imposed conditions, dismiss the complaint.

(e) Provides that except as otherwise provided by this subsection, a deferred disciplinary action by the board under the pilot program is not confidential and is subject to disclosure in accordance with Chapter 552 (Public Information), Government Code. Provides that if the person successfully meets the conditions imposed by the board in deferring final disciplinary action and the board dismisses the action or complaint, the deferred disciplinary action of the board is confidential to the same extent as a complaint filed under Section 301.466 (Confidentiality).

(f) Authorizes the board to treat a deferred disciplinary action taken against a nurse under this section as a prior disciplinary action against the nurse when considering the imposition of a sanction for a subsequent violation of this chapter or a rule or order adopted under this chapter.

(g) Authorizes the board to contract with a third party to evaluate the pilot program established under this section.

(h) Requires the board to appoint an advisory committee to assist the board in overseeing the pilot program and its evaluation. Requires the committee to include representatives of public advocacy organizations.

(i) Provides that this section expires September 1, 2014.

SECTION 2. Amends Chapter 301, Occupations Code, by adding Subchapter N, as follows:

#### SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING

Sec. 301.651. DEFINITION. Defines "corrective action."

Sec. 301.652. IMPOSITION OF CORRECTIVE ACTION. (a) Authorizes the board to impose a corrective action on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter. Provides that corrective action:

(1) is authorized to be a fine, remedial education, or any combination of a fine or remedial education;

(2) is not a disciplinary action under Subchapter J (Prohibited Practices and Disciplinary Actions); and

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

(b) Requires the board by rule to adopt guidelines for the types of violations for which a corrective action is authorized to be imposed.

Sec. 301.653. REPORT AND NOTICE OF VIOLATION AND CORRECTIVE ACTION. Authorizes the executive director of the board (executive director), if the executive director determines that a person has committed a violation for which a corrective action may be imposed under the guidelines adopted under Section 301.652(b), to give written notice of the determination and recommendation for corrective action to the person subject to the corrective action. Authorizes that the notice be given by certified mail. Requires that the notice include a brief summary of the alleged violation, state the recommended corrective action, and inform the person of the person's options in responding to the notice.

Sec. 301.654. **RESPONSE.** Authorizes the person, not later than the 20th day after the date the person receives the notice under Section 301.653, to accept in writing the executive director's determination and recommend corrective action, or reject the executive director's determination and recommended corrective action.

Sec. 301.655. **ACTION FOLLOWING RESPONSE.** (a) Provides that if the person accepts the executive director's determination and satisfies the recommended corrective action, the case is closed.

(b) Requires the executive director, 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, to terminate proceedings under this subchapter, and dispose of the matter as a complaint under Subchapter J (Prohibited Practices and Disciplinary Actions).

Sec. 301.656. **REPORT TO BOARD.** Requires the executive director to report periodically to the board on the corrective actions imposed under this chapter, including the number of corrective actions imposed, the types of violations for which corrective actions were imposed, and whether affected nurses accepted the corrective actions.

Sec. 301.657. **EFFECT ON ACCEPTANCE OF CORRECTIVE ACTION.** (a) Provides that except to the extent provided by this section, a person's acceptance of a corrective action under this subchapter does not constitute an admission of a violation but does constitute a plea of nolo contendere.

(b) Authorizes the board to treat a person's acceptance of corrective 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.

**SECTION 3.** Provides that changes in law made by this Act to Chapter 301, Occupations Code, apply to actions for violations under Chapter 301 (Nurses) pending on the effective date of this Act or commenced on or after the effective of this Act.

**SECTION 4.** Effective date: September 1, 2009.