

BILL ANALYSIS

Senate Research Center

S.B. 1058
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During each interim, the Board of Nursing (BON) and Texas Nurses Association (TNA) reviews the Nursing Practice Act (NPA) and identifies issues and makes recommendations to clarify and improve the nursing statute. S.B. 193, 82nd Legislature, Regular Session, 2011, made a number of reforms to the NPA last session. S.B. 1058 is the result of the most recent review of the NPA by BON and TNA.

As proposed, S.B. 1058 amends current law relating to the regulation of the practice of nursing.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Nursing (BON) is modified in SECTION 2 (Section 301.2511, Occupations Code) of this bill.

Rulemaking authority is expressly granted to BON in SECTION 3 (Section 301.257, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 301.004(a), Occupations Code, to provide that this chapter does not apply under certain circumstances, including to 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 (Nurses) and the act is within the practice of nursing, the Texas Board of Nursing (BON) is authorized to take action against that license based on that act.

SECTION 2. Amends Section 301.2511(c), Occupations Code, as follows:

(c) Requires BON by rule to develop a system for obtaining criminal history record information for a person accepted for enrollment in a nursing educational program that prepares the person for initial licensure as a registered or vocational nurse by requiring the person to submit to BON a set of fingerprints that meets the requirements of Subsection (a) (relating to requiring an applicant for a registered nurse license to submit a set of fingerprints). Deletes existing text authorizing BON by rule to develop a system for initiating the process of obtaining criminal history record information for applicants for a license under this chapter by requiring persons who enroll or plan to enroll in an educational program that prepares a person for a license as a registered nurse to submit to BON a set of fingerprints that meets the requirements of Subsection (a). Authorizes BON to develop a similar system for an applicant for enrollment in a nursing educational program.

SECTION 3. Amends Section 301.257, Occupations Code, by adding Subsections (j) and (k), as follows:

(j) Authorizes BON to file a petition under this section based on the results of a criminal history record information check conducted under Section 301.2511 (Criminal History Record Information for License Applicants). Requires BON by rule to adopt

requirements for the petition and determination under this subsection. Requires that the rules:

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

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

(k) Requires BON to 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 BON under that subsection.

SECTION 4. Amends Section 301.452(b), Occupations Code, to provide that a person is subject to denial of a license or to disciplinary action under this subchapter for certain acts, including for 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.

SECTION 5. Amends Section 301.453(b), Occupations Code, to authorize BON, by order, in addition to or instead of an action under Subsection (a) (relating to requiring BON to impose certain sanctions against a person who has committed an act listed in Section 301.452(b)), to require the person to follow certain actions, including abstaining from the consumption of alcohol or the use of drugs and submitting to random periodic screening for alcohol or drug use.

SECTION 6. Amends Section 301.454(a), Occupations Code, to prohibit BON, except in the case of a temporary suspension authorized under Section 301.455 (Temporary License Suspension or Restriction) or 301.4551 (Temporary License Suspension for Drug or Alcohol Use), or an action taken in accordance with an agreement between BON and a license holder, from taking any disciplinary action, rather than initiating a disciplinary action, relating to a license unless certain criteria are met.

SECTION 7. Amends Section 301.458(a), Occupations Code, to require BON or BON's authorized representative, unless there is an agreed disposition of the complaint under Section 301.463 (Agreed Disposition), if probable cause is found under Section 301.457(e)(2) (relating to requiring BON to conduct an investigation to determine whether probable cause exists that nurse committed an act that violates law), to file, rather than initiate proceedings by filing, formal charges against the nurse.

SECTION 8. Amends Section 301.465(a), Occupations Code, to authorize BON, notwithstanding Section 2001.089 (Issuance of Subpoena), Government Code, to request issuance of a subpoena to be served by personal service by a board investigator or by certified mail, rather than served in any manner authorized by law, including personal service by a board investigator and service by certified mail.

SECTION 9. Amends Section 301.466, Occupations Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Provides that a complaint and investigation concerning a nurse under this subchapter, all information and material compiled by BON in connection with the complaint and investigation, and the information described by Subsection (d) are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for release to anyone other than BON or a BON employee or agent involved in license holder discipline.

(d) Provides that if BON orders a nurse to participate in a peer assistance program approved by BON under Section 467.003 (Programs), Health and Safety Code, the complaint, filing of formal charges, nature of those charges, final board order, and disciplinary proceedings, notwithstanding Subsection (c) (relating to providing that the

filing of formal charges against a nurse and all subsequent information produced are not confidential), are subject to disclosure:

- (1) only to the same extent as information regarding a complaint is subject to disclosure under Subsection (b) (relating to authorizing information regarding a complaint and an investigation to be disclosed to certain persons); or
- (2) in a subsequent matter relating to BON order or a subsequent violation of this chapter or board rule.

SECTION 10. Amends the heading to Subchapter N, Chapter 301, Occupations Code, to read as follows:

SUBCHAPTER N. CORRECTIVE ACTION PROCEEDING AND DEFERRED ACTION

SECTION 11. Amends Section 301.651, Occupations Code, as follows:

Sec. 301.651. New heading: DEFINITIONS. Defines "deferred action" in this subchapter and makes nonsubstantive changes.

SECTION 12. Amends Section 301.655(b), Occupations Code, to require the executive director of BON (executive director), if the person does not accept the executive director's determination and recommended corrective action as originally proposed or as modified by BON or fails to respond in a timely manner to the executive director's notice as provided by Section 301.654 (Response), to terminate corrective action proceedings, rather than to terminate proceedings under this subchapter; and to dispose of the matter as a complaint under Subchapter J (Prohibited Practices and Disciplinary Actions).

SECTION 13. Amends Subchapter N, Chapter 301, Occupations Code, by adding Section 301.6555, as follows:

Sec. 301.6555. DEFERRED ACTION. (a) Authorizes BON, for any action or complaint for which BON proposes to impose on a person a sanction other than a reprimand or a denial, suspension, or revocation of a license, to:

- (1) defer the final action BON has proposed if the person conforms to conditions imposed by BON, including any condition BON could impose as a condition of probation under Section 301.468 (Probation); and
- (2) if the person successfully meets the imposed conditions, dismiss the complaint.

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

SECTION 14. Amends Section 301.656, Occupations Code, as follows:

Sec. 301.656. REPORT TO BOARD. Requires the executive director to report periodically to BON on the corrective or deferred actions actions imposed under this subchapter (Corrective Action Proceeding), including:

- (1) the number of actions, rather than corrective actions, imposed; and
- (2) the types of violations for which actions, rather than corrective actions, were imposed.

Deletes existing Subdivision (3) requiring the executive director to report periodically to BON on whether affected nurses accepted corrective actions.

SECTION 15. Amends Section 301.657, Occupations Code, as follows:

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

(b) Authorizes BON to treat a person's acceptance of corrective or deferred action as an admission of a violation if BON imposes a sanction on the person for a subsequent violation of this chapter or a rule or order adopted under this chapter.

(c) Authorizes BON to 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 16. Repealer: Section 301.1607 (Pilot Program on Deferral of Final Disciplinary Action), Occupations Code.

SECTION 17. (a) Makes application of the changes in law made by this Act to Chapter 301, Occupations Code, except as provided by Subsection (b), prospective.

(b) Requires that the changes made by this Act to Subchapter N apply to a violation that occurs before the effective date of the Act if the complaint relating to that violation remains pending on that date.

SECTION 18. Effective date: September 1, 2013.