

BILL ANALYSIS

C.S.H.B. 3189
By: Uresti
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law governing the inspection of nursing homes and intermediate care facilities provides for enforcement by the attorney general only, and contains no express provision allowing a temporary restraining order if access to an institution for inspection purposes is denied to Texas Department of Human Services employees. CSHB 3189 would add the availability of a temporary restraining order to prevent any person from denying access for inspection purposes to employees of the Texas Department of Human Services.

RULEMAKING AUTHORITY

The bill does not expressly delegate any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

CSHB 3189 amends the Health and Safety Code by specifying what constitutes “reasonable expenses and costs” as it relates to fees and penalties authorized in this section. The bill authorizes that if the attorney general brings an action to enforce this chapter and the court grants an injunction or temporary restraining order or appoints a trustee to operate the home, the attorney general may recover attorney’s fees and reasonable expenses and costs.

CSHB 3189 authorizes the Texas Department of Human Services (department) to petition a district court for a temporary restraining order to restrain a person from denying the department access to a institution or facility for inspection purposes if the department reasonably believes that the institution or facility is required to be licensed and that it is operating without a license. The bill authorizes a district court, on petition of the department, to issue an injunction or restraining order to restrain a person from denying the department access to the institution or facility if the department reasonably believes that the institution or facility is required to be licensed and that it is operating without a license.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 3189 differs from the original bill by removing county attorney from the specification of what constitutes reasonable expenses and costs. The substitute removes the authorization for the county attorney in a county with a population of 3.4 million or more to work in close cooperation throughout any legal proceedings requested by the department. The substitute removes the authorization for a venue for an action brought under this section to be in a county with a population of 3.4 million or more if the county attorney of the county brings the action in that county. The substitute removes the authorization for an affected institution to elect arbitration under this chapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to the department and to the office of the attorney general or the county attorney if a county attorney filed an enforcement action against the affected

institution.

CSHB 3189 differs from the original bill by removing the authorization for the county attorney in a county with a population of 3.4 million or more may bring an action to collect a civil penalty for a violation of this subchapter if the attorney general defers to the county attorney with respect for this action. The substitute removes the requirement for the county attorney, if the attorney general has deferred to the county attorney for prosecution of an action under this subchapter to provide legal assistance as necessary in enforcing the provisions of this subchapter. The substitute removes the authorization for the county attorney in a county with a population of 3.4 million or more to bring an action to enforce this chapter if the attorney general defers to the county attorney with respect to the action and provides that a county attorney that accepts a deferral has all the rights and obligations of the attorney general for enforcing this chapter.

CSHB 3189 differs from the original by removing the changes in the specification that an “unauthorized person,” in relation to disclosure of an unannounced inspection, does not include the county attorney in a county with a population of 3.4 million or more. The substitute removes the provision that in an action in a district court to collect a civil penalty under this section, any amount collected is required to be remitted in an equal division between the county attorney and the department if the action is instituted by a county attorney.

CSHB 3189 removes the authorization for a county attorney to recover reasonable expenses and costs if the county attorney brings an action against a person under Section 252.062 or 252.064 and an injunction is granted against the person or the person is found liable for a civil penalty. The substitute removes the authorization for the county attorney to recover reasonable expenses and costs in the investigation, initiation, and prosecution of an action, including reasonable investigative costs, witness fees, court costs, and deposition expenses.