

BILL ANALYSIS

S.B. 1204
By: Lindsay
Human Services
Committee Report (Amended)

BACKGROUND AND PURPOSE

Current law governing the inspection of nursing homes and intermediate care facilities provides for enforcement by the state attorney general only, and contains no express provision allowing for a temporary restraining order if access to an institution for inspection purposes is denied to Texas Department of Human Services (DHS) employees. As proposed, S.B. 1204 adds the availability of a temporary restraining order to prevent any person from denying access for inspection purposes to employees of DHS. This bill also allows the county attorney in counties with a population of 3.4 million or more to institute enforcement proceedings against certain non-compliant entities, upon request from DHS and deferral by the attorney general.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Chapter 242A, Health and Safety Code, by amending Section 242.016 and adding Section 242.017, as follows:

Sec. 242.016. FEES AND PENALTIES. (a) Defines "reasonable expenses and costs."

(b) Created from existing text. Makes conforming change.

(c) Requires a penalty collected in an enforcement action by a county attorney in accordance with Section 242.017 to be divided equally between the county and the Texas Department of Human Services (DHS).

(d) Prohibits investigation and attorney's fees from being assessed or collected by or on behalf of DHS or other state agency unless DHS or other state agency assesses and collects a penalty described under this chapter, except as provided by Subsection (a).

(e) Authorizes the attorney general or county court to recover attorney's fees and reasonable expenses and costs if the attorney general or a county attorney brings an action to enforce this chapter under Section 242.063 or 242.094, and the court grants an injunction or temporary restraining order or appoints a trustee to operate the home. Authorizes the county attorney to retain attorney's fees and reasonable expenses and costs recovered by the county attorney under this section.

Sec. 242.017. ENFORCEMENT BY COUNTY ATTORNEY. (a) Authorizes the county attorney in a county with a population of 3.4 million or more to bring an action to enforce this chapter under Section 242.063, 242.065, or 242.094, if the attorney general defers to the county attorney with respect to the action.

(b) Provides that a county attorney that accepts a deferral under Subsection (a) has all the rights and

obligations of the attorney general for enforcing this chapter.

SECTION 2. Amends Section 242.045(b), Health and Safety Code, to make conforming changes.

SECTION 3. Amends Sections 242.063(a) and (b), Health and Safety Code, as follows:

(a) Authorizes DHS to petition a district court for a temporary restraining order to restrain a person from denying DHS access to the institution for inspection purposes if DHS reasonably believes that the institution is required to be licensed and that it is operating without a license. Makes nonsubstantive changes.

(b) Authorizes a district court, on petition of DHS, to by injunction or temporary restraining order restrain a person from denying DHS access to the institution if DHS reasonably believes that the institution is required to be licensed and that it is operating without a license.

SECTION 4. Amends the heading to Section 242.073, Health and Safety Code, to read as follows:

Sec. 242.073. LEGAL ACTION BY THE ATTORNEY GENERAL OR CERTAIN COUNTY ATTORNEYS.

SECTION 5. Amends Section 242.073(a), Health and Safety Code, to make a conforming change.

SECTION 6. Amends Section 242.094(e), Health and Safety Code, to make a conforming and nonsubstantive changes.

SECTION 7. Amends Section 242.252(b), Health and Safety Code, to authorize an affected institution to elect arbitration under this subchapter by filing the election with the court in which the lawsuit is pending and sending notice of the election to DHS and to the office of the attorney general or the county attorney if a county attorney filed an enforcement action under Section 242.065 against the affected institution in accordance with Section 242.017.

SECTION 8. Amends Sections 242.319 and 242.320, Health and Safety Code, as added by Section 1.01, Chapter 1280, Acts of the 75th Legislature, Regular Session, 1997, and effective until the federal government issues a ruling that that system for licensure of nursing facility administrators does not comply with federal regulations, as follows:

Sec. 242.319. CIVIL PENALTY. Makes a conforming change.

Sec. 242.320. New heading: ASSISTANCE OF ATTORNEY GENERAL OR CERTAIN COUNTY ATTORNEYS. Requires the attorney general or 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.

SECTION 9. Amends Sections 242.324 and 242.325, Health and Safety Code, as added by Section 2.01, Chapter 1280, Acts of the 75th Legislature, Regular Session, 1997, and effective until the federal government issues a ruling that that system for licensure of nursing facility administrators does not comply with federal regulations, as follows:

Sec. 242.324. CIVIL PENALTY. Makes a conforming change.

Sec. 242.325. New heading: ASSISTANCE OF ATTORNEY GENERAL OR CERTAIN COUNTY ATTORNEYS. Makes a conforming change.

SECTION 10. Amends Chapter 252A, Health and Safety Code, by adding Section 252.012, as follows:

Sec. 252.012. ENFORCEMENT BY COUNTY ATTORNEY. (a) Authorizes the county attorney in a county with a population of 3.4 million or more to bring an action to enforce this chapter under Section 252.062, 252.064, or 22.093 if the attorney general defers to the county attorney with respect to the action.

(b) Provides that a county attorney that accepts a deferral under Subsection (a) has all the rights and obligations of the attorney general for enforcing this chapter under Section 252.063, 252.064, and 252.093.

SECTION 11. Amends Section 242.042(b), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 12. Amends Sections 252.062(a) and (b) to make conforming and nonsubstantive changes.

SECTION 13. Amends Section 252.064(c), Health and Safety Code, to require the civil penalty to be divided equally between the county attorney and DHS, if the action is instituted by a county attorney under Section 252.012.

SECTION 14. Amends Section 252.070, Health and Safety Code, as follows:

(a) Authorizes the attorney general or the county attorney to recover reasonable expenses and costs if the attorney general or county attorney brings an action against a person under Section 252.062 or 252.064 and an injunction is granted against certain persons, or the attorney general brings an action to enforce an administrative penalty assessed under Section 252.065 and the person is found liable for an administrative penalty. Deletes existing text related to recovering reasonable costs on behalf of the attorney general and DHS.

(b) Includes expenses incurred by the county attorney, including court costs, in the definition of reasonable expenses and costs, for the purposes of this section. Deletes attorney's fees as a reasonable expense and cost.

SECTION 15. Effective date: September 1, 2003.

EFFECTIVE DATE

September 1, 2003.

EXPLANATION OF AMENDMENTS

Committee amendment number 1 amends the bill by a new SECTION, not yet numbered, which amends the Health and Safety Code to allow nursing institutions the option to choose the Joint Commission on Accreditation of Health Organizations, instead of the Texas Department of Human Services, to perform inspections for renewal of a nursing institution's license.