

By: Naishtat

H.B. No. 2325

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to reports and investigations of abuse and neglect in  
3 nursing facilities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 242.125, Health and Safety Code, is  
6 amended to read as follows:

7 Sec. 242.125. PROCESSING OF REPORTS. (a) A report of abuse  
8 or neglect shall be made to the department or a local or state law  
9 enforcement agency. A report made by an owner or employee of an  
10 institution shall be made to the department and to the law  
11 enforcement agency described by Section 242.135(a).

12 (b) Except as provided by Section 242.135, a [A] local or  
13 state law enforcement agency that receives a report of abuse or  
14 neglect shall refer the report to the department or the designated  
15 agency.

16 SECTION 2. Section 242.126, Health and Safety Code, is  
17 amended by amending Subsections (c), (e), and (g) and adding  
18 Subsection (l) to read as follows:

19 (c) The agency shall begin the investigation:

20 (1) within 24 hours of receipt of the report or other  
21 allegation, if the report of abuse or neglect or other complaint  
22 alleges that:

23 (A) a resident's health or safety is in imminent  
24 danger;

1 (B) a resident has recently died because of  
2 conduct alleged in the report of abuse or neglect or other  
3 complaint; [~~or~~]

4 (C) a resident has been hospitalized or been  
5 treated in an emergency room because of conduct alleged in the  
6 report of abuse or neglect or other complaint;

7 (D) a resident has been a victim of any act or  
8 attempted act described by Section 21.11, 22.011, 22.021, or 25.02,  
9 Penal Code; or

10 (E) a resident has suffered bodily injury, as  
11 that term is defined by Section 1.07, Penal Code, as a result of  
12 abuse or neglect; or

13 (2) before the end of the next working day after the  
14 date of receipt of the report of abuse or neglect or other  
15 complaint, if the report or complaint alleges the existence of  
16 circumstances that could result in abuse or neglect and that could  
17 place a resident's health or safety in imminent danger.

18 (e) In investigating the report of abuse or neglect or other  
19 complaint, the investigator for the investigating agency shall:

20 (1) make an unannounced visit to the institution to  
21 determine the nature and cause of the alleged abuse or neglect of  
22 the resident;

23 (2) interview each available witness, including the  
24 resident that suffered the alleged abuse or neglect, identified by  
25 any source as having personal knowledge relevant to the report of  
26 abuse or neglect or other complaint;

27 (3) personally inspect any physical circumstance that

1 is relevant and material to the report of abuse or neglect or other  
2 complaint and that may be objectively observed;

3 (4) make a photographic record of any injury to a  
4 resident, after obtaining any consent required under state or  
5 federal law; and

6 (5) [~~(4)~~] write an investigation report that  
7 includes:

8 (A) the investigator's personal observations;

9 (B) a review of relevant documents and records;

10 (C) a summary of each witness statement,  
11 including the statement of the resident that suffered the alleged  
12 abuse or neglect; and

13 (D) a statement of the factual basis for the  
14 findings for each incident or problem alleged in the report or other  
15 allegation.

16 (g) Not later than the 30th day after the date the  
17 investigation is complete, the investigator shall prepare the  
18 written report required by Subsection (e). The department shall  
19 make the investigation report available to the public on request  
20 after the date the department's letter of determination is  
21 complete. The department shall delete from any copy made available  
22 to the public:

23 (1) the name of:

24 (A) [~~(1)~~] any resident, unless the department  
25 receives written authorization from a resident or the resident's  
26 legal representative requesting the resident's name be left in the  
27 report;

1            (B) [~~(2)~~] the person making the report of abuse  
2 or neglect or other complaint; and

3            (C) [~~(3)~~] an individual interviewed in the  
4 investigation; and

5            (2) photographs of any injury to the resident.

6            (1) The department or designated agency shall report each  
7 report of abuse or neglect or other complaint described by  
8 Subsection (c)(1) to the law enforcement agency described by  
9 Section 242.135(a) and shall cooperate with that law enforcement  
10 agency in the investigation of the report or complaint.

11            SECTION 3. Section 242.127, Health and Safety Code, is  
12 amended to read as follows:

13            Sec. 242.127. CONFIDENTIALITY. A report, record, or  
14 working paper used or developed in an investigation made under this  
15 subchapter and the name, address, and phone number of any person  
16 making a report under this subchapter are confidential and may be  
17 disclosed only for purposes consistent with the rules adopted by  
18 the board or the designated agency. The report, record, or working  
19 paper, and the name, address, and phone number of the person making  
20 the report, shall be disclosed to a law enforcement agency as  
21 necessary to permit the law enforcement agency to investigate a  
22 report of abuse or neglect or other complaint in accordance with  
23 Section 242.135.

24            SECTION 4. Subchapter E, Chapter 242, Health and Safety  
25 Code, is amended by adding Section 242.135 to read as follows:

26            Sec. 242.135. DUTIES OF LAW ENFORCEMENT. (a) A department  
27 or designated agency shall investigate a report of abuse or neglect

1 or other complaint described by Section 242.126(c)(1) jointly with:

2 (1) the municipal law enforcement agency, if the  
3 institution is located within the territorial boundaries of a  
4 municipality; or

5 (2) the sheriff's department of the county in which the  
6 institution is located, if the institution is not located within  
7 the territorial boundaries of a municipality.

8 (b) The law enforcement agency described by Subsection (a)  
9 shall investigate the report of abuse or neglect or other  
10 complaint, cooperate with the department or designated agency, and  
11 report to the department or designated agency the results of the  
12 investigation.

13 SECTION 5. This Act takes effect September 1, 2003.