

By: Davis of Harris

H.B. No. 3354

A BILL TO BE ENTITLED

AN ACT

1  
2 Relating to nursing home facilities licensed under Chapter 242 of  
3 the Health and Safety Code, and assisted living facilities licensed  
4 under Chapter 247 of the Health and Safety Code.

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

6 SECTION 1. Section 242.653, Health and Safety Code, is  
7 amended by adding subsection (a)(4) and subsection (c) to read as  
8 follows:

9 (a) The Committee shall:

10 (1)-(3) (No change)

11 (4) at the written request of a duly constituted 501  
12 (c) non-profit trade association, convene a public hearing for the  
13 purpose of receiving testimony with regard to a rule proposed or  
14 adopted by the department relating to the nursing facilities and to  
15 assisted living facilities, when it is alleged that the rule is in  
16 conflict with the intent of the legislature as set forth in this  
17 Chapter and in Chapter 247 (Assisted Living Facilities).

18 (b) (No change)

19 (c) The committee may, on a vote of a majority of the  
20 members, send the Texas Department of Human Services and the Health  
21 and Human Services Commission a statement that the committee has  
22 determined a rule proposed or adopted by the department or  
23 commission to be in conflict with legislative intent. Such  
24 statement may set forth:

1           (1) the nature of the conflict identified by the  
2 committee;

3           (2) a request that the Health and Human Services  
4 Commission review the rule pursuant to Chapter 531.034 of the Texas  
5 Government Code.

6           ~~[(c)]~~ (d) (No change)

7           ~~[(d)]~~ (e) (No change)

8           ~~[(e)]~~ (f) (No change)

9           SECTION 2. Section 247, Health and Safety Code, is amended  
10 by amending subsection (a) and by adding subsection (c) to read as  
11 follows:

12           (a) Except as provided by Subsection (b) and (c), Chapter  
13 242 does not apply to an assisted living facility licensed under  
14 this chapter.

15           (b) (No change)

16           (c) Subsection O. Chapter 242, applies to legislative  
17 oversight of department action relating to the assisted living  
18 facility regulatory system of this state in the same manner it  
19 applies to legislative oversight of department action relating to  
20 the nursing facility regulatory system of the state..

21           SECTION 3. Section 531.034, Government Code, is amended by  
22 adding subsection (b)(3) to read as follows:

23           (a) (No change)

24           (b) The commission shall review agency rules:

25               (1) (No change)

26               (2) (No change)

27               (3) at the request of the Long-Term Care Legislative

1 Oversight Committee

2 SECTION 4. Section 242.852, of the Health and Safety Code,  
3 is amended by adding subsection (c) as follows:

4 Sec. 242.852. CRIMINAL OFFENSE. (a) A person who  
5 intentionally hampers, obstructs, tampers with, or destroys an  
6 electronic monitoring device installed in a resident's room in  
7 accordance with this subchapter or a tape or recording made by the  
8 device commits an offense. An offense under this section is a Class  
9 B misdemeanor.

10 (b) It is a defense to prosecution under Subsection (a) that  
11 the person took the action with the effective consent of the  
12 resident on whose behalf the electronic monitoring device was  
13 installed or the resident's guardian or legal representative.

14 (c) A person who covertly uses an electronic monitoring  
15 device, as defined in Section 242.843 of the Health and Safety Code,  
16 in the room of a resident of an institution or who authorizes the  
17 covert use of an electronic monitoring device in the room of a  
18 resident of an institution commits an offense. An offense under  
19 this section is a Class B misdemeanor.

20 SECTION 5. Section 242.0372, of the Health and Safety Code,  
21 enacted by Section 6.01, Chapter 1284, Acts of the 77th  
22 Legislature, Regular Session, 2001, to be effective September 1,  
23 2003, is amended by adding subsection (f) to read as follows:

24 (f) An institution is not required to comply with this  
25 section before September 1, 2005.

26 Sec. 242.0445. REPORTING OF VIOLATIONS. (a) The  
27 department or the department's representative conducting an

1 inspection, survey, or investigation under Section 242.043 or  
2 242.044 shall:

3 (1) list each violation of the law or rule on a form  
4 designated by the department for inspections; and

5 (2) identify the specific law or rule the facility  
6 violated.

7 (b) At the conclusion of an inspection, survey, or  
8 investigation under Section 242.043 or 242.044, the department or  
9 the department's representative conducting the inspection, survey,  
10 or investigation shall discuss the violations with the facility's  
11 management at the exit conference. The department or the  
12 department's representative shall leave a written list of the  
13 violations with the facility at the time of the exit conference. If  
14 the department or the department's representative discovers any  
15 additional violations during the review of field notes or  
16 preparation of the official final list, the department or the  
17 department's representative shall give the facility an additional  
18 exit conference regarding the additional violations. A telephone  
19 conference between the department or the department's  
20 representative and the facility, regarding additional violations,  
21 shall not be sufficient to transcend the department's  
22 responsibility for an additional exit conference in person.

23 (c) Following an additional exit conference, if applicable,  
24 the facility shall submit a plan to correct the violations to the  
25 regional director not later than the 10th working day after the date  
26 the facility receives the final official statement of violations.

27 SECTION 7. Section 247.0275, Health and Safety Code, is

1 amended in section (c) and (d) as follows:

2           Sec. 247.0275. INSPECTION EXIT CONFERENCE. (a) At the  
3 conclusion of an inspection under Section 247.023 (a) or Section  
4 247.027, the inspector shall perform an exit conference to advise  
5 the assisted living facility of the findings resulting from the  
6 inspection.

7           (b) At the exit conference, the inspector shall provide a  
8 copy of the inspection checklist to the assisted living facility  
9 and list each violation discovered during the inspection, with  
10 specific reference to the standard violated.

11           (c) If, after the initial exit conference, additional  
12 violations are cited, the inspector shall conduct an additional  
13 exit conference regarding the newly identified violations. A  
14 telephone conference between the department or the department's  
15 representative and the facility, regarding additional violations,  
16 shall not be sufficient to transcend the department's  
17 responsibility for an additional exit conference in person.

18           (d) Following an additional exit conference, if applicable,  
19 the assisted living facility shall submit an acceptable plan of  
20 correction to the regional director with supervisory authority over  
21 the inspector not later than the 10th working day after the date [~~of~~  
22 ~~completion of the final exit conference~~] the facility receives the  
23 final official statement of violations.

24           SECTION 8. This Act takes effect September 1, 2003.