

1-1 By: Lindsay S.B. No. 1204
1-2 (In the Senate - Filed March 12, 2003; March 19, 2003, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 14, 2003, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 14, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the inspection of, and enforcement of laws relating to,
1-9 nursing homes and intermediate care facilities.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subchapter A, Chapter 242, Health and Safety
1-12 Code, is amended by amending Section 242.016 and adding Section
1-13 242.017 to read as follows:

1-14 Sec. 242.016. FEES AND PENALTIES. (a) In this section,
1-15 "reasonable expenses and costs" include expenses incurred by the
1-16 department, the attorney general, or a county attorney to
1-17 investigate, initiate, and prosecute an action, including
1-18 reasonable investigative costs, witness fees, deposition expenses,
1-19 and court costs.

1-20 (b) Except as expressly provided by Subsection (c) or this
1-21 chapter, a fee or penalty collected by or on behalf of the
1-22 department under this chapter must be deposited to the credit of the
1-23 general revenue fund and may be appropriated only to the department
1-24 to administer and enforce this chapter.

1-25 (c) A penalty collected in an enforcement action by a county
1-26 attorney in accordance with Section 242.017 shall be divided
1-27 equally between the county attorney and the department.

1-28 (d) Except as provided by Subsection (e), investigation
1-29 [Investigation] and attorney's fees may not be assessed or
1-30 collected by or on behalf of the department or other state agency
1-31 unless the department or other state agency assesses and collects a
1-32 penalty described under this chapter. A county attorney may
1-33 collect and retain attorney's fees and reasonable expenses and
1-34 costs in an action brought by the county attorney if the court
1-35 assesses a civil penalty.

1-36 (e) If the attorney general or a county attorney brings an
1-37 action to enforce this chapter under Section 242.063 or 242.094 and
1-38 the court grants an injunction or temporary restraining order or
1-39 appoints a trustee to operate the home, the attorney general or
1-40 county attorney may recover attorney's fees and reasonable expenses
1-41 and costs. The county attorney may retain attorney's fees and
1-42 reasonable expenses and costs recovered by the county attorney
1-43 under this subsection.

1-44 Sec. 242.017. ENFORCEMENT BY COUNTY ATTORNEY. (a) The
1-45 county attorney in a county with a population of 3.4 million or more
1-46 may bring an action to enforce this chapter under Section 242.063,
1-47 242.065, or 242.094 if the attorney general defers to the county
1-48 attorney with respect to the action.

1-49 (b) A county attorney that accepts a deferral under
1-50 Subsection (a) has all the rights and obligations of the attorney
1-51 general for enforcing this chapter.

1-52 SECTION 2. Subsection (b), Section 242.045, Health and
1-53 Safety Code, is amended to read as follows:

1-54 (b) In this section, "unauthorized person" does not
1-55 include:

- 1-56 (1) the department;
1-57 (2) the office of the attorney general;
1-58 (3) a statewide organization for the elderly,
1-59 including the American Association of Retired Persons, the Texas
1-60 Senior Citizen Association, and the Texas Retired Federal
1-61 Employees;
1-62 (4) an ombudsman or representative of the Texas
1-63 Department on Aging;
1-64 (5) a representative of an agency or organization when

2-1 a Medicare or Medicaid survey is made concurrently with a licensing
2-2 inspection; [~~or~~]

2-3 (6) any other person or entity authorized by law to
2-4 make an inspection or to accompany an inspector; or

2-5 (7) the county attorney in a county with a population
2-6 of 3.4 million or more.

2-7 SECTION 3. Subsections (a) and (b), Section 242.063, Health
2-8 and Safety Code, are amended to read as follows:

2-9 (a) The department may petition a district court for:

2-10 (1) a temporary restraining order to restrain a person
2-11 from a violation or threatened violation of the standards imposed
2-12 under this chapter or any other law affecting residents if the
2-13 department reasonably believes that the violation or threatened
2-14 violation creates an immediate threat to the health and safety of a
2-15 resident; [~~and~~]

2-16 (2) an injunction to restrain a person from a
2-17 violation or threatened violation of the standards imposed under
2-18 this chapter or by any other law affecting residents if the
2-19 department reasonably believes that the violation or threatened
2-20 violation creates a threat to the health and safety of a resident;
2-21 and

2-22 (3) a temporary restraining order to restrain a person
2-23 from denying the department access to the institution for
2-24 inspection purposes if the department reasonably believes that the
2-25 institution is required to be licensed and that it is operating
2-26 without a license.

2-27 (b) A district court, on petition of the department, may by
2-28 injunction or temporary restraining order:

2-29 (1) prohibit a person from violating the standards or
2-30 licensing requirements prescribed by this chapter;

2-31 (2) restrain or prevent the establishment, conduct,
2-32 management, or operation of an institution without a license issued
2-33 under this chapter; [~~or~~]

2-34 (3) grant the injunctive relief warranted by the facts
2-35 on a finding by the court that a person is violating or threatening
2-36 to violate the standards or licensing requirements prescribed by
2-37 this chapter; or

2-38 (4) restrain a person from denying the department
2-39 access to the institution if the department reasonably believes
2-40 that the institution is required to be licensed and that it is
2-41 operating without a license.

2-42 SECTION 4. The heading to Section 242.073, Health and
2-43 Safety Code, is amended to read as follows:

2-44 Sec. 242.073. LEGAL ACTION BY THE ATTORNEY GENERAL OR
2-45 CERTAIN COUNTY ATTORNEYS.

2-46 SECTION 5. Subsection (a), Section 242.073, Health and
2-47 Safety Code, is amended to read as follows:

2-48 (a) The department and the attorney general or the county
2-49 attorney in a county with a population of 3.4 million or more shall
2-50 work in close cooperation throughout any legal proceedings
2-51 requested by the department.

2-52 SECTION 6. Subsection (e), Section 242.094, Health and
2-53 Safety Code, as added by Chapters 583 and 815, Acts of the 73rd
2-54 Legislature, Regular Session, 1993, is amended to read as follows:

2-55 (e) Venue for an action brought under this section is:

2-56 (1) in Travis County; or

2-57 (2) in a county with a population of 3.4 million or
2-58 more if the county attorney of the county brings the action under
2-59 Section 242.017 in that county.

2-60 SECTION 7. Subsection (b), Section 242.252, Health and
2-61 Safety Code, is amended to read as follows:

2-62 (b) An affected institution may elect arbitration under
2-63 this subchapter by filing the election with the court in which the
2-64 lawsuit is pending and sending notice of the election to the
2-65 department and to the office of the attorney general or the county
2-66 attorney if a county attorney filed an enforcement action under
2-67 Section 242.065 against the affected institution in accordance with
2-68 Section 242.017. The election must be filed not later than the 10th
2-69 day after the date on which the answer is due or the date on which

3-1 the answer is filed, whichever is sooner. If a civil penalty is
3-2 requested after the initial filing of a Section 242.094 lawsuit
3-3 through the filing of an amended or supplemental pleading, an
3-4 affected institution must elect arbitration not later than the 10th
3-5 day after the date on which the amended or supplemental pleading is
3-6 served on the affected institution or its counsel.

3-7 SECTION 8. Sections 242.319 and 242.320, Health and Safety
3-8 Code, as added by Section 1.01, Chapter 1280, Acts of the 75th
3-9 Legislature, Regular Session, 1997, and effective until the federal
3-10 government issues a ruling that that system for licensure of
3-11 nursing facility administrators does not comply with federal
3-12 regulations, are amended to read as follows:

3-13 Sec. 242.319. CIVIL PENALTY. A person who violates this
3-14 subchapter is liable to the state for a civil penalty of \$1,000 for
3-15 each day of violation. At the request of the department, the
3-16 attorney general shall bring an action to recover a civil penalty
3-17 established by this section. The county attorney in a county with a
3-18 population of 3.4 million or more may bring an action to collect a
3-19 civil penalty for a violation of this subchapter if the attorney
3-20 general defers to the county attorney with respect to the action.

3-21 Sec. 242.320. ASSISTANCE OF ATTORNEY GENERAL OR CERTAIN
3-22 COUNTY ATTORNEYS. The attorney general or the county attorney, if
3-23 the attorney general has deferred to the county attorney for
3-24 prosecution of an action under this subchapter, shall provide legal
3-25 assistance as necessary in enforcing the provisions of this
3-26 subchapter. This requirement does not relieve a local prosecuting
3-27 officer of any of the prosecuting officer's duties under the law.

3-28 SECTION 9. Sections 242.324 and 242.325, Health and Safety
3-29 Code, as added by Section 2.01, Chapter 1280, Acts of the 75th
3-30 Legislature, Regular Session, 1997, and effective on issuance by
3-31 the federal government of a ruling that that system for licensure of
3-32 nursing facility administrators does not comply with federal
3-33 regulations, are amended to read as follows:

3-34 Sec. 242.324. CIVIL PENALTY. A person who violates this
3-35 subchapter is liable to the state for a civil penalty of \$1,000 for
3-36 each day of violation. At the request of the department, the
3-37 attorney general shall bring an action to recover a civil penalty
3-38 established by this section. The county attorney in a county with a
3-39 population of 3.4 million or more may bring an action to collect a
3-40 civil penalty for a violation of this subchapter if the attorney
3-41 general defers to the county attorney with respect to the action.

3-42 Sec. 242.325. ASSISTANCE OF ATTORNEY GENERAL OR CERTAIN
3-43 COUNTY ATTORNEYS. The attorney general or the county attorney, if
3-44 the attorney general has deferred to the county attorney for
3-45 prosecution of an action under this subchapter, shall provide legal
3-46 assistance as necessary in enforcing the provisions of this
3-47 subchapter. This requirement does not relieve a local prosecuting
3-48 officer of any of the prosecuting officer's duties under the law.

3-49 SECTION 10. Subchapter A, Chapter 252, Health and Safety
3-50 Code, is amended by adding Section 252.012 to read as follows:

3-51 Sec. 252.012. ENFORCEMENT BY COUNTY ATTORNEY. (a) The
3-52 county attorney in a county with a population of 3.4 million or more
3-53 may bring an action to enforce this chapter under Section 252.062,
3-54 252.064, or 252.093 if the attorney general defers to the county
3-55 attorney with respect to the action.

3-56 (b) A county attorney that accepts a deferral under
3-57 Subsection (a) has all the rights and obligations of the attorney
3-58 general for enforcing this chapter under Sections 252.062, 252.064,
3-59 and 252.093.

3-60 SECTION 11. Subsection (b), Section 252.042, Health and
3-61 Safety Code, is amended to read as follows:

3-62 (b) In this section, "unauthorized person" does not
3-63 include:

- 3-64 (1) the department;
- 3-65 (2) the office of the attorney general;
- 3-66 (3) a representative of an agency or organization when
3-67 a Medicaid survey is made concurrently with a licensing inspection;
3-68 [~~or~~]
- 3-69 (4) any other person or entity authorized by law to

4-1 make an inspection or to accompany an inspector; or
4-2 (5) the county attorney in a county with a population
4-3 of 3.4 million or more.

4-4 SECTION 12. Subsections (a) and (b), Section 252.062,
4-5 Health and Safety Code, are amended to read as follows:

4-6 (a) The department may petition a district court for a
4-7 temporary restraining order to:

4-8 (1) restrain a person from continuing a violation of
4-9 the standards prescribed by this chapter if the department finds
4-10 that the violation creates an immediate threat to the health and
4-11 safety of the facility's residents; or

4-12 (2) restrain a person from denying the department
4-13 access to the facility for inspection purposes if the department
4-14 reasonably believes that the facility is required to be licensed
4-15 and that it is operating without a license.

4-16 (b) A district court, on petition of the department, may by
4-17 injunction or temporary restraining order:

4-18 (1) prohibit a person from continuing a violation of
4-19 the standards or licensing requirements prescribed by this chapter;

4-20 (2) restrain or prevent the establishment, conduct,
4-21 management, or operation of a facility without a license issued
4-22 under this chapter; [~~or~~]

4-23 (3) grant the injunctive relief warranted by the facts
4-24 on a finding by the court that a person is violating the standards
4-25 or licensing requirements prescribed by this chapter; or

4-26 (4) restrain a person from denying the department
4-27 access to the facility if the department reasonably believes that
4-28 the facility is required to be licensed and that it is operating
4-29 without a license.

4-30 SECTION 13. Subsection (c), Section 252.064, Health and
4-31 Safety Code, is amended to read as follows:

4-32 (c) On request of the department, the attorney general may
4-33 institute an action in a district court to collect a civil penalty
4-34 under this section. Any amount collected shall be remitted to the
4-35 comptroller for deposit to the credit of the general revenue fund.
4-36 If the action is instituted by a county attorney under Section
4-37 252.012, the civil penalty shall be divided equally between the
4-38 county attorney and the department.

4-39 SECTION 14. Section 252.070, Health and Safety Code, is
4-40 amended to read as follows:

4-41 Sec. 252.070. EXPENSES AND COSTS FOR COLLECTION OF CIVIL OR
4-42 ADMINISTRATIVE PENALTY. (a) If the attorney general or a county
4-43 attorney brings an action against a person under Section 252.062 or
4-44 252.064 [~~or to enforce an administrative penalty assessed under~~
4-45 Section 252.065] and an injunction is granted against the person or
4-46 the person is found liable for a civil penalty, or the attorney
4-47 general brings an action to enforce an administrative penalty
4-48 assessed under Section 252.065 and the person is found liable for an
4-49 administrative penalty, the attorney general or the county attorney
4-50 may recover[, on behalf of the attorney general and the
4-51 department,] reasonable expenses and costs.

4-52 (b) For purposes of this section, reasonable expenses and
4-53 costs include expenses incurred by the department, [and] the
4-54 attorney general, or the county attorney in the investigation,
4-55 initiation, and prosecution of an action, including reasonable
4-56 investigative costs, [attorney's fees,] witness fees, court costs,
4-57 and deposition expenses.

4-58 SECTION 15. This Act takes effect September 1, 2003.

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