

By: Nelson

S.B. No. 195

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a nurse or nurse aide employed by a temporary nursing
3 service agency to provide hospice services to patients; providing a
4 penalty.

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

6 SECTION 1. Subtitle B, Title 4, Health and Safety Code, is
7 amended by adding Chapter 254 to read as follows:

8 CHAPTER 254. TEMPORARY NURSING SERVICE AGENCY

9 Sec. 254.001. DEFINITIONS. In this chapter:

10 (1) "Hospice services" means palliative care provided
11 to a terminally ill patient or a patient's family as part of a
12 coordinated program of medical and other services available 24
13 hours a day, seven days a week, during the last stages of illness,
14 death, and bereavement, and provided according to need in a home,
15 nursing home, residential facility, or inpatient facility. The
16 term does not include inpatient care normally provided in a
17 licensed hospital to a terminally ill patient who has not elected to
18 receive hospice services.

19 (2) "Nurse" has the meaning assigned by Section
20 301.002(3), Occupations Code.

21 (3) "Nurse aide" means a person who is practicing
22 under the delegated authority of a registered nurse and is
23 authorized by state or federal law to use the title "nurse aide" or
24 is required to be listed in the nurse aide registry under Chapter

1 250.

2 (4) "Private agency" means a person engaged in the
3 business of obtaining criminal history record information on behalf
4 of a temporary nursing service agency.

5 (5) "Temporary nursing service agency" means a person
6 that employs a nurse or nurse aide and assigns the nurse or nurse
7 aide to temporarily provide hospice services to patients or their
8 families either directly or through an institution, facility, or
9 other agency. The term includes a temporary employment service,
10 nursing pool, private duty nurse service, or sitter service.

11 Sec. 254.002. APPLICANT AND EMPLOYEE INFORMATION; EMPLOYEE
12 TRAINING. (a) A temporary nursing service agency may not employ a
13 person as a nurse or nurse aide to temporarily provide hospice
14 services unless the temporary nursing service agency:

15 (1) obtains criminal history record information on the
16 person in accordance with this chapter;

17 (2) obtains references on the person; and

18 (3) verifies that:

19 (A) for a person applying for a position with the
20 agency as a nurse, the person is licensed under Chapter 301,
21 Occupations Code; or

22 (B) for a person applying for a position as a
23 nurse aide, the person is registered under Chapter 250 unless the
24 applicant is exempt from the registration requirements under that
25 chapter.

26 (b) On employment of a person as a nurse or nurse aide to
27 provide hospice services, a temporary nursing service agency shall

1 provide and require the person to successfully complete as a
2 condition of employment a training program of not less than five
3 hours on the proper provision of hospice services.

4 Sec. 254.003. INFORMATION OBTAINED BY TEMPORARY NURSING
5 SERVICE AGENCY OR PRIVATE AGENCY. (a) A temporary nursing service
6 agency or private agency is entitled to obtain from the Department
7 of Public Safety criminal history record information maintained by
8 the department that relates to a person who is:

9 (1) an applicant for employment as a nurse or nurse
10 aide to temporarily provide hospice services for a temporary
11 nursing service agency; or

12 (2) a nurse or nurse aide employed by a temporary
13 nursing service agency to temporarily provide hospice services.

14 (b) A temporary nursing service agency may:

15 (1) pay a private agency to obtain criminal history
16 record information for an applicant or employee described by
17 Subsection (a) directly from the Department of Public Safety; or

18 (2) obtain the information directly from the
19 department.

20 (c) A private agency shall forward criminal history record
21 information received under this section to the temporary nursing
22 service agency requesting the information.

23 Sec. 254.004. VERIFICATION OF EMPLOYABILITY; DISCHARGE.

24 (a) A temporary nursing service agency may not employ a person as a
25 nurse or nurse aide to temporarily provide hospice services if the
26 agency determines, as a result of obtaining criminal history record
27 information, that the person has been convicted of an offense

1 listed in this chapter that:

2 (1) bars employment; or

3 (2) is a contraindication to employment with the
4 persons the agency serves.

5 (b) A temporary nursing service agency may not employ an
6 applicant as a nurse aide to temporarily provide hospice services
7 if the agency determines:

8 (1) the applicant is not listed in the nurse aide
9 registry established under Chapter 250, unless the applicant is
10 exempt from the registration requirements under that chapter; or

11 (2) the applicant is designated in the registry as
12 having a finding entered into the registry concerning abuse,
13 neglect, or mistreatment of a consumer or misappropriation of a
14 consumer's property.

15 (c) A temporary nursing service agency shall immediately
16 discharge a person whom the agency determines may not be employed
17 under Subsection (a) or (b).

18 Sec. 254.005. CRIMINAL HISTORY RECORD OF APPLICANTS AND
19 EMPLOYEES. (a) In this section, "identifying information"
20 includes:

21 (1) the complete name, race, and sex of an applicant or
22 employee;

23 (2) any known identifying number of the applicant or
24 employee, including social security number, driver's license
25 number, or state identification number; and

26 (3) the applicant's or employee's date of birth.

27 (b) A temporary nursing service agency shall submit

1 electronically, on disk, or on a typewritten form to the Department
2 of Public Safety identifying information for an applicant or
3 employee to obtain the person's criminal history record
4 information:

5 (1) at the time the person applies for employment as a
6 nurse or nurse aide to temporarily provide hospice services; and

7 (2) at other times as the agency may determine
8 appropriate.

9 (c) The temporary nursing service agency shall review a
10 criminal conviction of any kind reported by the Department of
11 Public Safety to determine whether the conviction bars the person
12 from employment in the agency under Section 254.007 or is a
13 contraindication to employment.

14 Sec. 254.006. NOTICE AND OPPORTUNITY TO BE HEARD CONCERNING
15 ACCURACY OF INFORMATION. (a) If a temporary nursing service agency
16 believes a conviction bars a person from employment in the agency
17 under Section 254.007 or is a contraindication to employment, the
18 agency shall notify the applicant or employee.

19 (b) The Department of Public Safety shall:

20 (1) give a person notified under Subsection (a) the
21 opportunity to be heard concerning the accuracy of the criminal
22 history record information; and

23 (2) notify the temporary nursing service agency if
24 inaccurate information is discovered.

25 Sec. 254.007. CONVICTIONS BARRING EMPLOYMENT. (a) A
26 person regarding whom a temporary nursing service agency is
27 entitled to obtain criminal history record information under this

1 chapter may not be employed by the agency if the person has been
2 convicted of an offense under:

3 (1) Chapter 19, Penal Code (criminal homicide);

4 (2) Chapter 20, Penal Code (kidnapping and unlawful
5 restraint);

6 (3) Section 21.11, Penal Code (indecenty with a
7 child);

8 (4) Section 22.011, Penal Code (sexual assault);

9 (5) Section 22.02, Penal Code (aggravated assault);

10 (6) Section 22.04, Penal Code (injury to a child,
11 elderly individual, or disabled individual);

12 (7) Section 22.041, Penal Code (abandoning or
13 endangering child);

14 (8) Section 22.08, Penal Code (aiding suicide);

15 (9) Section 25.031, Penal Code (agreement to abduct
16 from custody);

17 (10) Section 25.08, Penal Code (sale or purchase of a
18 child);

19 (11) Section 28.02, Penal Code (arson);

20 (12) Section 29.02, Penal Code (robbery);

21 (13) Section 29.03, Penal Code (aggravated robbery);

22 or

23 (14) the laws of another state, federal law, or the
24 Uniform Code of Military Justice for an offense containing elements
25 that are substantially similar to the elements of an offense listed
26 under Subdivisions (1)-(13).

27 (b) A person may not be employed in a position the duties of

1 which involve direct contact with a patient as a nurse or nurse aide
2 temporarily providing hospice services for a temporary nursing
3 service agency before the fifth anniversary of the date on which the
4 person is convicted of an offense under:

5 (1) Section 22.01, Penal Code (assault), that is
6 punishable as a Class A misdemeanor or as a felony;

7 (2) Section 30.02, Penal Code (burglary);

8 (3) Chapter 31, Penal Code (theft), that is punishable
9 as a felony;

10 (4) Section 32.45, Penal Code (misapplication of
11 fiduciary property or property of a financial institution), that is
12 punishable as a Class A misdemeanor or a felony; or

13 (5) Section 32.46, Penal Code (securing execution of a
14 document by deception), that is punishable as a Class A misdemeanor
15 or a felony.

16 Sec. 254.008. RECORDS PRIVILEGED. (a) The criminal
17 history records are for the exclusive use of the temporary nursing
18 service agency, the private agency that obtained the records on
19 behalf of the requesting temporary nursing service agency, and the
20 applicant or employee who is the subject of the records.

21 (b) All criminal history records and reports and the
22 information contained in the records and reports received by the
23 temporary nursing service agency, or by the private agency for the
24 purpose of being forwarded to the requesting agency, are privileged
25 and confidential information.

26 (c) The criminal history records and reports and the
27 information contained in the records and reports may not be

1 released or otherwise disclosed to any person except on court order
2 or with the written consent of the person being investigated.

3 Sec. 254.009. CRIMINAL PENALTY. (a) A person commits an
4 offense if the person releases or otherwise discloses any
5 information received under this chapter except as prescribed by
6 Section 254.008.

7 (b) An offense under this section is a Class A misdemeanor.

8 SECTION 2. Subchapter F, Chapter 411, Government Code, is
9 amended by adding section 411.1161 to read as follows:

10 Sec. 411.1161. ACCESS TO CRIMINAL HISTORY RECORD
11 INFORMATION: TEMPORARY NURSING SERVICE AGENCY PROVIDING CERTAIN
12 NURSES AND NURSE AIDES. (a) In this section, "hospice services,"
13 "nurse," "nurse aide," and "temporary nursing service agency" have
14 the meanings assigned by Section 254.001, Health and Safety Code.

15 (b) A temporary nursing service agency that employs nurses
16 and nurse aides to temporarily provide hospice services is entitled
17 to obtain from the department criminal history record information
18 maintained by the department that relates to a person who is:

19 (1) an applicant for employment by the temporary
20 nursing service agency as a nurse or nurse aide to temporarily
21 provide hospice services; or

22 (2) a nurse or nurse aide employed by the temporary
23 nursing service agency to temporarily provide hospice services.

24 SECTION 3. The change in law made by this Act does not
25 require a temporary nursing service agency to comply with Section
26 254.002, Health and Safety Code, as added by this Act, for a person
27 who:

1 (1) is employed by a facility on the effective date of
2 this Act; and

3 (2) remains continuously employed by that facility.

4 SECTION 4. This Act takes effect September 1, 2005.