

BILL ANALYSIS

S.B. 871
By: Uresti
Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under current law, the language regarding the terminology of case referrals in assisted living facilities is vague and does not allow the attorney general to assess or collect fees associated with the cost of the investigation or attorney's fees if a penalty is assessed. The person in control at the assisted living facility is defined within Texas statute but not held ultimately responsible for financial penalties assessed under Chapter 247 (Assisted Living Facilities), Health and Safety Code.

S.B. 871 clarifies provisions in Chapter 247, Health and Safety Code, that the Office of the Attorney General utilizes when enforcing violations in assisted living facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Aging and Disability Services in SECTION 1 of this bill.

ANALYSIS

While the statutory reference in this bill is to the Texas Department of Human Services (DHS), the following amendments affect the Department of Aging and Disability Services (DADS), as the successor agency to DHS.

S.B. amends Section 247.045, Health and Safety Code, by amending Subsections (d) and (e) and adding Subsections (h) and (i).

The bill authorizes the attorney general to institute and conduct a suit to collect a penalty and fees at the request of the department.

The bill requires DADS to refer a case to a local district attorney, county attorney, or city attorney if the attorney general fails to notify DADS within 30 days of referral from DADS that the attorney general will accept the case.

The bill requires the district attorney, county attorney, or city attorney to file suit in a district court to collect and retain the penalty.

The bill prohibits investigation and attorney's fees from being assessed or collected by or on behalf of DADS or other state agency unless a penalty described under this chapter is assessed, rather than unless DADS or other state agency assesses and collects a penalty described under this chapter.

The bill authorizes the state to seek satisfaction from any owner, other controlling person, or affiliate of the person found liable if that person fails to pay any amount he or she is obligated to pay under this section. It authorizes the owner, controlling person, or affiliate to be found liable in the same suit or in another suit on a showing by the state that the amount to be paid has not been paid or otherwise legally discharged. Authorizes DADS, by rule, to establish a method for satisfying an obligation imposed under this section from an insurance policy, letter of credit, or other contingency fund.

The bill defines "affiliate."

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The bill makes application of this Act prospective.

EFFECTIVE DATE

September 1, 2007.