

Amend SB 806 by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION \_\_\_\_\_. The heading to Section 250.003, Health and Safety Code, is amended to read as follows:

Sec. 250.003. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH; DISCHARGE.

SECTION \_\_\_\_\_. Section 250.003, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (d) to read as follows:

(a) A facility may not employ an applicant:

(1) [~~a person~~] if the facility determines, as a result of a criminal history check, that the applicant [~~a person~~] has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the consumers the facility serves;

(2) [~~, and~~] if the applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry; and

(3) until the facility verifies that the applicant is not designated in the registry maintained under this chapter or in the employee misconduct registry maintained under Section 253.007 as having a finding entered into the registry concerning abuse, neglect, or mistreatment of a consumer of a facility, or misappropriation of a consumer's property.

(a-1) Except for an applicant for employment at or an employee of a facility licensed under Chapter 242 or 247, a person licensed under another law of this state is exempt from the requirements of this chapter.

(d) In addition to the initial verification of employability, a facility shall:

(1) annually search the nurse aide registry maintained under this chapter and the employee misconduct registry maintained under Section 253.007 to determine whether any employee of the facility is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from a facility; and

(2) maintain in each employee's personnel file a copy of the results of the search conducted under Subdivision (1).

SECTION \_\_\_\_\_. Section 253.001, Health and Safety Code, is amended by amending Subdivisions (1), (2), and (3) and adding Subdivision (3-a) to read as follows:

(1) "Commissioner" means the commissioner of aging and disability [~~human~~] services.

(2) "Department" means the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services.

(3) "Employee" means a person who:

(A) works at a facility;

(B) is an individual who provides personal care services, active treatment, or any other personal services to a resident or consumer of the facility; and

(C) is not licensed by an agency of the state to perform the services the employee performs at the facility or is [~~+~~ and

[~~(D) is not~~] a nurse aide employed by a [~~nursing~~] facility.

(3-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

SECTION \_\_\_\_\_. Chapter 253, Health and Safety Code, is amended by adding Section 253.0055 to read as follows:

Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. If a finding of reportable conduct is the basis for an entry in the nurse aide registry maintained under Chapter 250, and the entry is subsequently removed from the nurse aide registry, the commissioner or the commissioner's designee shall immediately remove the record of reportable conduct from the employee misconduct registry maintained under Section 253.007.

SECTION \_\_\_\_\_. Section 253.006, Health and Safety Code, is amended to read as follows:

Sec. 253.006. INFORMAL PROCEEDINGS. The executive commissioner [~~department~~] by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

SECTION \_\_\_\_\_. Subsection (a), Section 253.007, Health and

Safety Code, is amended to read as follows:

(a) The department shall establish an employee misconduct registry. If the department in accordance with this chapter finds that an employee of a facility has committed [~~commits~~] reportable conduct, the department shall make a record of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date the reportable conduct occurred, and a description of the reportable conduct.

SECTION \_\_\_\_\_. Section 253.0075, Health and Safety Code, is amended to read as follows:

Sec. 253.0075. RECORDING REPORTABLE CONDUCT REPORTED BY DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~] SERVICES. On receipt of a finding of an employee's reportable conduct by the Department of Family and Protective [~~and Regulatory~~] Services under Subchapter I, Chapter 48, Human Resources Code, the department shall record the information in the employee misconduct registry in accordance with Section 253.007.

SECTION \_\_\_\_\_. Section 253.008, Health and Safety Code, is amended to read as follows:

Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH. (a) Before a facility as defined in this chapter or an agency as defined in Section 48.401, Human Resources Code, [~~or a person exempt from licensing under Section 142.003(a)(19)~~] may hire an employee, the facility or agency [~~person~~] shall search the employee misconduct registry under this chapter and the nurse aide registry maintained under Chapter 250 as required by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the applicant for employment is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or agency or an individual receiving services from a facility or agency [~~from a person exempt from licensing under Section 142.003(a)(19)~~].

(b) A facility or agency [~~a person exempt from licensing under Section 142.003(a)(19)~~] may not employ a person who is listed in either registry as having abused, neglected, or exploited a resident or consumer of a facility or agency or an individual

receiving services from a facility or agency [~~from a person exempt from licensing under Section 142.003(a)(19)~~].

(c) In addition to the initial verification of employability, a facility or agency shall:

(1) annually search the employee misconduct registry and the nurse aide registry maintained under Chapter 250 to determine whether any employee of the facility or agency is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or agency or an individual receiving services from a facility or agency; and

(2) maintain in each employee's personnel file a copy of the results of the search conducted under Subdivision (1).

SECTION \_\_\_\_\_. Section 253.009, Health and Safety Code, is amended to read as follows:

Sec. 253.009. NOTIFICATION. (a) Each facility as defined in this chapter and each agency as defined in Section 48.401, Human Resources Code, [~~and each person exempt from licensing under Section 142.003(a)(19)~~] shall notify its employees in a manner prescribed by the Department of Aging and Disability Services [~~department~~]:

(1) about the employee misconduct registry; and

(2) that an employee may not be employed if the employee is listed in the registry.

(b) The executive commissioner [~~department~~] shall adopt rules to implement this section.

SECTION \_\_\_\_\_. Section 48.401, Human Resources Code, is amended to read as follows:

Sec. 48.401. DEFINITIONS. In this subchapter:

(1) "Agency" means:

(A) an entity licensed under Chapter 142, Health and Safety Code; [~~or~~]

(B) a person exempt from licensing under Section 142.003(a)(19), Health and Safety Code; or

(C) an entity investigated by the department under Subchapter F or under Section 261.404, Family Code.

(2) "Commissioner" means the commissioner of the Department of Family and Protective Services.

(3) "Employee" means a person who:

(A) works for an agency;

(B) provides personal care services, active treatment, or any other personal services to an individual receiving agency services or to an individual who is a child for whom an investigation is authorized under Section 261.404, Family Code; and

(C) is not licensed by the state to perform the services the person performs for the agency.

(4) [~~(3)~~] "Employee misconduct registry" means the employee misconduct registry established under Chapter 253, Health and Safety Code.

~~[(4) "Executive director" means the executive director of the Department of Protective and Regulatory Services.]~~

(5) "Reportable conduct" includes:

(A) abuse or neglect that causes or may cause death or harm to an individual receiving agency services;

(B) sexual abuse of an individual receiving agency services;

(C) financial exploitation of an individual receiving agency services in an amount of \$25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to an individual receiving agency services.

SECTION \_\_\_\_\_. Section 48.403, Human Resources Code, is amended to read as follows:

Sec. 48.403. FINDING. After an investigation and following the procedures of this subchapter, if the department confirms or validates the occurrence of reportable conduct by an employee, the department shall immediately forward the finding to the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

SECTION \_\_\_\_\_. Subsection (c), Section 48.404, Human Resources Code, is amended to read as follows:

(c) If the employee notified of the violation accepts the finding of the department or fails to timely respond to the notice, the commissioner [~~executive director~~] or the commissioner's

~~[executive director's]~~ designee shall issue an order approving the finding and ordering that the department's findings be forwarded to the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services to be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code.

SECTION \_\_\_\_\_. Section 48.405, Human Resources Code, is amended to read as follows:

Sec. 48.405. HEARING; ORDER. (a) If the employee requests a hearing, the department or its designee shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the employee; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner ~~[executive director]~~ or the commissioner's ~~[executive director's]~~ designee a proposal for decision as to the occurrence of the reportable conduct.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner ~~[executive director]~~ or the commissioner's ~~[executive director's]~~ designee by order may find that the reportable conduct has occurred. If the commissioner ~~[executive director]~~ or the commissioner's ~~[executive director's]~~ designee finds that reportable conduct has occurred, the commissioner ~~[executive director]~~ or the commissioner's ~~[executive director's]~~ designee shall issue an order approving the finding.

SECTION \_\_\_\_\_. Subsections (b) and (d), Section 48.406, Human Resources Code, are amended to read as follows:

(b) Not later than the 30th day after the date the decision becomes final as provided by Chapter 2001, Government Code, the employee may file a petition for judicial review contesting the finding of the reportable conduct. If the employee does not request judicial review of the finding, the department shall send a record of the department's findings to the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services to record in the employee misconduct

registry under Section 253.007, Health and Safety Code.

(d) If the court sustains the finding of the occurrence of the reportable conduct, the department shall forward the finding of reportable conduct to the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

SECTION \_\_\_\_\_. Section 48.407, Human Resources Code, is amended to read as follows:

Sec. 48.407. INFORMAL PROCEEDINGS. The executive commissioner [~~department~~] by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

SECTION \_\_\_\_\_. Section 48.408, Human Resources Code, is amended to read as follows:

Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT REGISTRY. (a) When the department forwards a finding of reportable conduct to the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services for recording in the employee misconduct registry, the department shall provide the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address of the agency, the date the reportable conduct occurred, and a description of the reportable conduct.

(b) If a governmental agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, the department may send to the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services, for recording in the employee misconduct registry, the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address of the agency, the date of the act, and a description of the act.

SECTION \_\_\_\_\_. Not later than September 1, 2010, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this Act related to the employee misconduct registry, the nurse aide registry, and records contained in those registries. The

changes in law made by this Act apply only to reportable conduct that occurs on or after September 1, 2010. Reportable conduct that occurs before that date is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.