

BILL ANALYSIS

Senate Research Center
81R149 UM-D

S.B. 34
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State Affairs
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 210 enacted by the Texas Legislature in 1993 requires employees and other persons at inpatient mental health facilities, treatment facilities, or rehabilitation centers to report abuse or neglect of patients to the regulatory or licensing agency for that institution. The legislation also established a civil case of action and created penalties for the act of sexual exploitation of a patient by a mental health provider.

A Houston judge ruled in 2003, and the Fourth District Court of Appeals upheld in 2006, that an institution cannot be held liable for an employee's sexual exploitation of a patient unless the institution had reason to believe that the abuse would occur. Because the statute is written regarding "the person" instead of "a" or "any" person, the judge ruled that reason to believe could only be established if the employee abused the same person twice. The judge reviewed the testimony surrounding S.B. 210 in order to determine the intent of the 73rd Legislature, but found no guidance, as the debate focused on whether and how clergy would be included as mental health counselors. Therefore, the judge ruled that he had to assume the legislature was explicit in its word choice.

As proposed, S.B. 34 amends language in the Civil Practice and Remedies Code regarding the liability of an employer of a mental health services provider.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subsection (a) and (b), Section 81.003, Civil Practice and Remedies Code, as follows:

(a) Provides that an employer of a mental health services provider (provider) is liable to a patient or former patient of the provider for damages if the patient or former patient is injured as described by Section 81.002 (Sexual Exploitation Cause of Action) and the employer knows or has reason to know that the provider engaged in sexual exploitation of a patient or former patient and the employer failed to take certain actions, rather than the provider engaged in the sexual exploitation of the patient or former patient and the employer failed to take certain actions.

(b) Provides that an employer or former employer of a provider is liable to a patient or former patient of the provider for damages if the patient or former patient is injured as described by Section 81.002 and the employer or former employer knows of the occurrence of sexual exploitation by the provider of a patient or former patient, rather than the employer or former employer knows of the occurrence of the sexual exploitation by the provider of the patient or former patient.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2009.