

BILL ANALYSIS

C.S.S.B. 785
By: Nelson
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas has two registries and one reporting system maintained by the Department of Aging and Disability Services (DADS) to track workers who commit acts of abuse, neglect, or exploitation.

The employee misconduct registry, established in 1999, contains names of unlicensed long-term care facility employees who commit acts of abuse, neglect, or exploitation. State school and state hospital employees are not required to be included in the registry, but long-term care employers must check the registry prior to hiring. A person listed in the registry is permanently barred from employment by a long-term care facility.

The nurse aide registry, established in 1989, lists all nurse aides eligible to work in Texas, and long-term care employers also must check this registry prior to hiring.

The client abuse and neglect reporting system, established in 1982, contains names of state school and state hospital workers and employees of community mental health and mental retardation centers who commit acts of abuse or neglect. Until recently, employers in the private sector were not able to access this database. State schools and hospitals are required to check the reporting system and both registries prior to hiring.

C.S.S.B. 785 eliminates gaps in the state's tracking of employees who commit acts of abuse to prevent the rehiring of such employees in alternative long-term care settings.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 9 and 17 of this bill.

ANALYSIS

C.S.S.B. 785 amends the Health and Safety Code to require the Department of Aging and Disability Services (DADS) to establish an employee misconduct registry and makes related conforming changes and nonsubstantive corrections. The bill requires certain health care facilities serving elderly, mentally retarded, or disabled persons, in addition to the initial verification of employability, to annually search the nurse aide registry and the employee misconduct registry maintained by DADS to determine whether any employee of such a 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 maintain in each employee's personnel file a copy of the results of the search. The bill revises the definition of "employee" to include a nurse aide employed by a facility.

C.S.S.B. 785 requires the commissioner of aging and disability services or the commissioner's designee, if a finding of reportable misconduct is the basis for an entry in the nurse aide registry and the entry is subsequently removed from the registry, to immediately remove the record of the reportable conduct from the employee misconduct registry.

C.S.S.B. 785 clarifies that an agency licensed to provide home- and community-based support services, certain persons exempt from that licensing requirement but providing those services, and certain entities investigated by the Department of Family and Protective Services (DFPS) are required to search the employee misconduct registry and the nurse aide registry to verify an applicant's employability. The bill clarifies that such an agency or exempt provider is prohibited from employing a person listed in the registry as having abused, neglected, or exploited a resident, consumer, or individual receiving services. The bill requires a facility or agency, in addition to the initial verification of employability, to annually search the employee misconduct registry and the nurse aid registry 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 maintain in each employee's personnel file a copy of the results of the search. The bill clarifies that each agency is required to notify employees in a manner prescribed by DADS about the employee misconduct registry and that an employee may not be employed if the employee is listed in the registry.

C.S.S.B. 785 amends the Human Resources Code to include in the definition of "agency" certain facilities investigated by DFPS for alleged abuse, neglect, or exploitation. The bill revises the definition of "employee" to clarify that the term includes a person who provides personal care services, active treatment, or any other personal services to an individual who is a child for whom an investigation is authorized under provisions relating to investigations in certain mental health and mental retardation facilities.

C.S.S.B. 785 specifies that the forwarding of a finding of validated reportable conduct to DADS for the employee misconduct registry required of DFPS is to be performed immediately. The bill adds a reference to the designee of DFPS in provisions relating to a hearing conducted at the request of an employee to contest a determination of reportable conduct.

C.S.S.B. 785 requires the executive commissioner of the Health and Human Services Commission to adopt the rules necessary to implement the changes in law made by the bill not later than September 1, 2010. The bill makes its provisions apply to reportable conduct that occurs on or after September 1, 2010. The bill clarifies that it does not make an appropriation and that a provision in the bill that creates a new governmental program, creates a new entitlement, or imposes a new duty on a governmental entity is not mandatory during a fiscal period for which the legislature has not made a specific appropriation to implement the provision.

C.S.S.B. 785 makes nonsubstantive provisions to definitions to conform to Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 785 omits a provision included in the original requiring each convalescent home, nursing home, and related institution to make available on request a copy of the registration issued by the Department of Aging and Disability Services (DADS) for each certified nurse aide employed by or working at the facility.

C.S.S.B. 785 adds a provision not included in the original requiring a facility licensed by DADS to maintain in each employee's personnel file a copy of the results of the annual search of the nurse aide registry and the employee misconduct registry.

C.S.S.B. 785 omits a provision included in the original clarifying that notice of reportable misconduct required to be given by DADS be given to the employee and requiring DADS to immediately record the reportable conduct in the employee misconduct registry with a notation that the finding was pending a final determination. The substitute adds a provision not included in the original requiring the commissioner of aging and disability services or the commissioner's designee to immediately remove a record of reportable conduct from the employee misconduct registry if that finding is the basis for an entry in the nurse aid registry and the entry is subsequently removed from the nurse aide registry.

C.S.S.B. 785 omits a provision included in the original requiring the commissioner of aging and disability services or the commissioner's designee to record a final determination of reportable conduct in the employee misconduct registry on determination that reportable conduct has occurred after a hearing conducted at the request of an employee. The substitute omits a provision included in the original requiring the commissioner or the commissioner's designee to issue an order rejecting the determination and immediately remove the record of the conduct from the registry, if the commissioner or designee finds that the conduct has not occurred based on the findings of fact and conclusions of law and the recommendations of the hearings examiner. The substitute omits provisions included in the original making conforming changes in procedures for notice to be given to an employee regarding the commissioner's final determination and judicial review of that determination. The substitute omits a provision included in the original requiring DADS to immediately remove a record of reportable conduct from the registry if the court overturns a finding of the occurrence of such conduct.

C.S.S.B. 785 omits a provision included in the original clarifying that provisions relating to the prohibition against a facility or agency employing a person who is listed in either registry of misconduct do not prohibit a facility or agency from employing or continuing to employ a person whose only record of reportable conduct included in the registry was pending a final determination.

C.S.S.B. 785 adds a provision not included in the original requiring a facility or agency to maintain in each employee's personnel file a copy of the results of the annual search of the nurse aide registry and the employee misconduct registry. The substitute omits a provision included in the original requiring each facility or agency to notify an employee that a facility or agency is not prohibited from employing an employee listed in the registry pending a final determination and making a conforming change relating to a prohibition against the person's employment after such final determination.

C.S.S.B. 785 adds a provision not included in the original adding a reference to the designee of the Department of Family and Protective Services in provisions relating to hearing conducted at the request of an employee to contest a determination of reportable conduct.