

BILL ANALYSIS

Senate Research Center
81R2733 YDB-D

S.B. 785
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Health & Human Services
3/27/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Texas has a number of registries to screen employees and prevent those who commit acts of abuse from working in long-term care settings. Even so, a number of regulatory gaps enable such employees to work in long-term care settings, including different registries for private sector employees than for state workers and requiring only pre-employment registry checks. This bill is intended to eliminate regulatory gaps and recording errors that enable employees who commit acts of abuse to work in long-term care settings.

As proposed, S.B. 785 adds state employees who committed acts of abuse to the public employee misconduct registry and requires long-term care facilities to check the public registry annually to ensure that no barred employees are working in a long-term care facility.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH) and the Texas Department of Human Services, the following amendments affect the Department of Aging and Disability Services, the Department of Assistive and Rehabilitative Services, or the Department of State Health Services, as the successor agencies.]

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Human Services is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 8 (Section 253.006, Health and Safety Code) and SECTION 12 (Section 253.009, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 242.042(a), Health and Safety Code, to require each institution to prominently and conspicuously post for display in a public area of the institution that is readily available to residents, employees, and visitors certain information including a copy of the registration issued by the Texas Department of Health (TDH) for each certified nurse aide employed by or working at the facility.

SECTION 2. Amends Section 253.001, Health and Safety Code, as follows:

Sec. 253.001. DEFINITIONS. Redefines "commissioner," "department," "employee," "facility," and "health and human services agency." Defines "executive commissioner."

SECTION 3. Amends Section 253.002, Health and Safety Code, as follows:

Sec. 253.002. INVESTIGATION BY DEPARTMENT. Requires the department [Department of Aging and Disability Services (DADS), Department of State Health Services (DSHS), or Department of Assistive and Rehabilitative Services (DARS)], if the department that regulates a facility receives a report that an employee of the facility, rather than a facility, committed reportable conduct, to investigate the report to determine whether the employee has committed the reportable conduct.

SECTION 4. Amends the heading to Section 253.003, Health and Safety Code, to read as follows:

Sec. 253.003. DETERMINATION; NOTICE; REPORT TO REGISTRY.

SECTION 5. Amends Section 253.003, Health and Safety Code, by amending Subsections (a) and (c) and adding Subsection (d), as follows:

(a) Requires the department, if, after an investigation, the department determines that the reportable conduct occurred, to:

(1) give written notice of the department's findings that must include a brief summary of the department's findings; and a statement of the person's right to a hearing on the occurrence of the reportable conduct; and

(2) immediately forward a record of the reportable conduct to DADS for inclusion in the registry under Section 253.007 (Employee Misconduct Registry) with a notation that the finding is pending a financial determination.

(c) Requires the commissioner of DADS or the commissioner's designee to issue an order approving the determination and ordering that the reportable conduct be recorded in the registry under Section 253.007; and immediately forward the record of the reportable conduct to DADS for inclusion of the final determination in the registry under Section 253.007.

(d) Requires a department that regulates a facility and that is subject to Subchapter I (Employee Misconduct Registry), Chapter 48 (Investigations and Protective Services for Elderly and Disabled Persons), Human Resources Code, notwithstanding any other provision of this subchapter, to comply with the procedures established under that subchapter in submitting a record of reportable conduct to DADS.

SECTION 6. Amends Section 253.004, Health and Safety Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Requires the commissioner of DADS or the commissioner's designee, if the commissioner or the commissioner's designee by order finds that the reportable conduct has occurred, to issue an order approving the determination; and forward the record of reportable conduct to DADS for inclusion of the final determination in the registry under Section 253.007.

(d) Requires the commissioner of DADS or the commissioner's designee, if the commissioner of DADS or the commissioner of DADS's designee finds that the reportable conduct has not occurred based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, to issue an order rejecting the determination; and immediately notify DADS to remove the record of the reportable conduct from the registry maintained under Section 253.007.

SECTION 7. Amends Sections 253.005(a), (b), and (d), Health and Safety Code, as follows:

(a) Requires the department that regulates a facility to give notice of the order under Section 253.004 (Hearing; Order) to the employee alleged to have committed the reportable conduct. Requires the notice to include certain statements, including a statement that the final determination of the reportable conduct has been, rather than will be, recorded in the registry under Section 253.007 and will be retained in the registry if the employee does not request judicial review of the determination; or the determination is sustained by the court.

(b) Requires that if the employee does not request judicial review of the determination, the record of the final determination of the reportable conduct be retained in the registry under Section 253.007, rather than requiring the department to record the reportable conduct.

(d) Requires the department, if the court sustains the finding of the occurrence of the reportable conduct, that regulates the facility, to notify DADS and requires DADS to note that the court sustained the final determination of the reportable conduct in the registry

under Section 253.007, rather than to record the reportable conduct. Requires the department that regulates the facility, if the court overturns the findings of the occurrence of the reportable conduct, to immediately notify DADS and requires DADS to immediately remove the record of the reportable conduct from the registry under Section 253.007.

SECTION 8. Amends Section 253.006, Health and Safety Code, as follows:

Sec. 253.006. **INFORMAL PROCEEDINGS.** Requires the executive commissioner of the Health and Human Services Commission, rather than the Texas Department of Human Services (TDHS), by rule to adopt procedures governing informal proceedings held in compliance with Section 2001.056 (Informal Disposition of Contested Case), Government Code.

SECTION 9. Amends Section 253.007, Health and Safety Code, as follows:

Sec. 253.007. **EMPLOYEE MISCONDUCT REGISTRY.** (a) Requires DADS to establish a misconduct registry.

(b) Requires the department that regulates a facility, if the department finds after an investigation and notification to the employee of the determination and of the right to a hearing that an employee of a facility has committed reportable conduct, to make a record of certain information relating to the employee. Requires the department to immediately forward the finding and record to DADS requires and DADS to immediately include the finding and record in the employee misconduct registry with a notation that the finding is pending a final determination.

(c) Requires the department that regulates a facility, if the department makes a final determination after an opportunity for a hearing that an employee of a facility has committed reportable conduct, to immediately forward the final determination and record to DADS.

(d) Requires DADS, if DADS receives a notification of a final determination from a department that regulates a facility or of an action of a court under Section 253.004, as appropriate, to immediately include in the registry information related to the final determination of reportable misconduct; or remove from the registry any notation of employee misconduct if it is finally determined by the department that regulates a facility or a court that reportable conduct did not occur.

(e) Redesignated from existing Subsection (b). Authorizes DADS, rather than the TDHS, if an agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, to make a record in the employee misconduct registry of certain information.

(f) Redesignated from existing Subsection (c). Requires DADS, rather than TDHS, to make the registry available to the public.

SECTION 10. Amends Section 253.0075, Health and Safety Code, as follows:

Sec. 253.0075. New heading: **RECORDING CERTAIN REPORTABLE CONDUCT.** Requires DADS, rather than TDHS, on receipt of a finding of an employee's reportable conduct by Department of Family and Protective Services (DFPS), rather than Department of Protective and Regulatory Services, under Subchapter I (Employee Misconduct Registry), Chapter 48, Human Resources Code, or Subchapter B (Report of Abuse or Neglect; Immunities), Chapter 261 (Investigation of Report of Child Abuse or Neglect), Family Code, after compliance with the procedures established under Subchapter I, Chapter 48, Human Resources Code, to record the information in the employee misconduct registry in accordance with Section 253.007.

SECTION 11. Amends Section 253.008, Health and Safety Code, as follows:

Sec. 253.008. New heading: VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH. (a) Requires a facility, before a facility, rather than the facility or a certain person is authorized to hire an employee, to search the employee misconduct registry under this chapter and the nurse aide registry maintained under Chapter 250 (Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities) 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 an individual receiving services from a facility. Deletes existing text relating to a person exempt from licensing under Section 142.003(a)(19).

(b) Prohibits a facility, rather than a facility or a person exempt from licensing under Section 142.003(a)(19), from employing a person who is listed in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from a facility. Provides that this subsection does not prohibit a facility from employing a person whose only record of reportable conduct included in the registry is pending a final determination. Deletes existing text relating to a person exempt from licensing under Section 142.003(a)(19).

(c) Requires a facility, in addition to the initial verification of employability, to annually search the employee misconduct registry and the nurse aide registry maintained under Chapter 250 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.

SECTION 12. Amends Section 253.009, Health and Safety Code, as follows:

Sec. 253.009. NOTIFICATION. (a) Requires each facility, rather than each facility and each person exempt from licensing under Section 142.003(a)(19), to notify its employees in a manner prescribed by DADS, rather than TDHS:

- (1) about the employee misconduct registry;
- (2) that an employee is prohibited from being employed if the employee is listed in the registry after a final determination; and
- (3) that an employee listed in the registry pending a final determination is authorized to continue to be employed.

(b) Requires the executive commissioner of HHSC, rather than TDHS, to adopt rules to implement this section.

SECTION 13. Amends Section 253.010, Health and Safety Code, as follows:

Sec. 253.010. REMOVAL FROM REGISTRY. Authorizes DADS, rather than TDHS, to remove a person from the employee misconduct registry if, after receiving a written request from the person, the department determines that the person does not meet the requirements for inclusion in the employee misconduct registry.

SECTION 14. Amends Section 48.403, Human Resources Code, as follows:

Sec. 48.403. FINDING. Requires TDHS, after an investigation and following procedures of this subchapter, if TDHS confirms or validates the occurrence of reportable conduct by an employee, to immediately forward the finding to DADS, rather than TDHS, to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

SECTION 15. Amends Section 48.404(c), Human Resources Code, to make a conforming change.

SECTION 16. Amends Sections 48.406(b) and (d), Human Resources Code, to make conforming changes.

SECTION 17. Amends Section 48.408, Human Resources Code, to make conforming changes.

SECTION 18. Amends Subchapter B, Chapter 261, Family Code, by adding Section 261.1035, as follows:

Sec. 261.1035. RECORD FILED WITH DEPARTMENT OF AGING AND DISABILITY SERVICES. (a) Defines "employee," "facility," and "reportable conduct."

(b) Requires a regulatory agency that regulates, contracts with, operates, or oversees a facility, if an investigation under this chapter results in a finding by the agency that an employee of the facility has committed reportable conduct, to comply with the procedures established under Subchapter I, Chapter 48, Human Resources Code, or Chapter 253, Health and Safety Code, as applicable, to report the reportable conduct and include the information in the employee misconduct registry under Chapter 253, Health and Safety Code.

SECTION 19. Provides that the changes in law made by this Act apply only to reportable conduct that occurs on or after the effective date of this Act.

SECTION 20. Requires the executive commissioner of the Health and Human Services Commission, as soon as practicable after the effective date of this Act, to adopt the rules necessary to implement the changes in law made by this Act.

SECTION 21. Effective date: upon passage or September 1, 2009.