

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 785
By: Nelson
Health & Human Services
4/8/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 785 provides that employees of state schools, state hospitals and community mental health and mental retardation centers are subject to the same employee misconduct registry reporting process that the Department of Family and Protective Services uses for private sector employees. The bill requires that nursing homes make public, upon request, the credentials of nursing aides. The bill authorizes an employer to employ or continue to employ a person whose only record of reportable conduct is pending a final determination and requires the executive commissioner of the Health and Human Services Commission to adopt rules necessary to implement the bill by September 1, 2010.

[**Note:** 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, the Department of Family and Protective Services, or the executive commissioner of the Health and Human Services Commission, as the successor entities to DHS.]

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 9 (Section 253.006, Health and Safety Code), SECTION 13 (Section 253.009, Health and Safety Code), SECTION 19 (Section 48.407, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 242, Health and Safety Code, by adding Section 242.053, as follows:

Sec. 242.053. CERTIFIED NURSE AID REGISTRATION. Requires each institution to make available on request a copy of the registration issued by the Texas Department of Human Services (DHS) for each certified nurse aide employed by or working at the facility.

SECTION 2. Amends the heading to Section 250.003, Health and Safety Code, to read as follows:

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

SECTION 3. Amends Section 250.003, Health and Safety Code, by amending Subsection (a) and adding Subsections (a-1) and (d), as follows:

(a) Prohibits a facility from employing an applicant, rather than a person, if the facility determines as a result of a criminal history check, that the applicant 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; if the applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry; and 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 (Employee Misconduct Registry) 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) Creates this subsection from existing text.

(d) Requires a facility, in addition to the initial verification of employability, to 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.

SECTION 4. Amends Section 253.001, Health and Safety Code, by amending Subdivisions (1), (2), and (3), and adding Subdivision (3-a), as follows:

(1) Redefines "commissioner."

(2) Redefines "department."

(3) Redefines "employee."

(3-a) Defines "executive commissioner."

SECTION 5. Amends the heading to Section 253.003, Health and Safety Code, to read as follows:

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

SECTION 6. Amends Section 253.003(a), Health and Safety Code, as follows:

(a) Requires the Department of Aging and Disability Services (DADS), if after an investigation, DADS determines that the reportable conduct occurred, to give to the employee written notice of the DADS's findings that are required to include a brief summary of DADS's findings and a statement of the person's right to a hearing on the occurrence of the reportable conduct; and immediately record the reportable conduct in the registry in accordance with Section 253.007 with a notation that the finding is pending a final determination. Makes nonsubstantive changes.

SECTION 7. Amends Section 253.004, Health and Safety Code, by amending Subsection (c) and adding Subsection (d), as follows:

(c) Authorizes the commissioner of aging and disability services (commissioner) by order, based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, to find that the reportable conduct has occurred. Requires the commissioner or the commissioner's designee, if the commissioner or the commissioner's designee finds that the reportable conduct has occurred, to issue an order approving the determination and record the final determination of reportable conduct in the registry under Section 253.007.

(d) Requires the commissioner or the commissioner's designee, if the commissioner or the commissioner'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 remove the record of the reportable conduct from the registry maintained under Section 253.007.

SECTION 8. Amends Sections 253.005(a), (b), and (d), Health and Safety Code, as follows:

(a) Requires DADS to give notice of the order under Section 253.004(c) (relating to a finding that reportable conduct has occurred), rather than 253.004 (Hearing; Order), to the employee alleged to have committed the reportable conduct. Requires that the notice include separate statements of the findings of fact and conclusions of law; a statement of the right of the employee to judicial review of the order and 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) Authorizes the employee, not later than the 30th day after the date on which the decision becomes final as provided by Chapter 2001 (Administrative Procedure), Government Code, to file a petition for judicial review contesting the finding of the reportable conduct. Requires the record of the final determination of the reportable conduct, if the employee does not request judicial review of the determination, to be retained in the registry under Section 253.007.

(d) Requires DADS, if the court sustains the finding of the occurrence of the reportable conduct, to note that the court sustained the final determination of the reportable conduct in the registry, rather than record the reportable conduct, under Section 253.007. Requires DADS, if the court overturns the finding of the occurrence of the reportable conduct, to immediately remove the record of the reportable conduct from the registry under Section 253.007.

SECTION 9. Amends Section 253.006, Health and Safety Code, as follows:

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

SECTION 10. Amends Section 253.007(a), Health and Safety Code, to require DADS to establish an employee misconduct registry. Requires DADS, if DADS in accordance with this chapter finds that an employee of a facility has committed, rather than commits, reportable conduct, to 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 11. Amends Section 253.0075, Health and Safety Code, as follows:

Sec. 253.0075. New heading: **RECORDING REPORTABLE CONDUCT REPORTED BY DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES.** Requires DADS, on receipt of a finding of an employee's reportable conduct by the Department of Family and Protective Services under Subchapter I (Employee Misconduct Registry), Chapter 48 (Investigation and Protective Services for Elderly and Disabled Persons), Human Resources Code, to record the information in the employee misconduct registry in accordance with Section 253.007.

SECTION 12. Amends Section 253.008, Health and Safety Code, as follows:

Sec. 253.008. New heading: **VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH.** (a) Requires the facility or agency, before a facility as defined in this chapter or an agency as defined in Section 48.401 (Definitions), Human Resources Code, rather than an agency as defined in Section 48.401, Human Resources Code, or a person exempt from licensing under Section 142.003(a)(19) (relating to person who provides certain services as exempt from licensing requirement), may hire an employee, to 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, rather than 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) Prohibits a facility or agency, 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 agency or an individual receiving services from a facility or agency. Provides that this subsection does not prohibit a facility or agency from employing or continuing to employ a person whose only record or reportable conduct included in the registry is pending a final determination. Makes a conforming change.

(c) Requires the agency, in a addition to the initial verification of employability, to annually search the employee misconduct registry 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) 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.

SECTION 13. Amends Section 253.009, Health and Safety Code, as follows:

Sec. 253.009. NOTIFICATION. (a) Requires each facility as defined in this chapter and each agency as defined in Section 48.401, Human Resources Code, to notify its employees in a manner prescribed by DADS about the employee misconduct registry; that an employee is prohibited from being employed if the employee is listed in the registry after a final determination; and that a facility or agency is not prohibited from employing an employee listed in the registry pending a final determination. Makes conforming changes.

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

SECTION 14. Amends Section 48.401, Human Resources Code, as follows:

Sec. 48.401. DEFINITIONS. Redefines "agency" and "employee." Defines "reportable conduct" and "commissioner." Deletes existing definition of "executive director." Makes nonsubstantive changes.

SECTION 15. Amends Section 48.403, Human Resources Code, as follows:

Sec. 48.403. FINDING. Requires the Department of Family and Protective Services (DFPS), after an investigation and following the procedure of this subchapter, if DFPS confirms or validates the occurrence of reportable conduct by an employee, to immediately forward the finding to DADS to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

SECTION 16. Amends Section 48.404(c), Human Resources Code, to require the commissioner of Family and Protective Services (commissioner), or the commissioner's designee, rather than the executive director or the executive director's designee, if the employee notified of the violation accepts the finding of DFPS or fails to timely respond to the notice, to issue an order approving the finding and ordering that DFPS's findings be forwarded to DADS to be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code.

SECTION 17. Amends Sections 48.405(b) and (c), Human Resources Code, as follows:

(b) Requires the hearings examiner to make findings of fact and conclusions of law and to promptly issue to the commissioner, rather than executive director, or the commissioner's designee, rather than the executive director or the executive director's designee, a proposal for decision as to the occurrence of the reportable conduct.

(c) Authorizes the commissioner or the commissioner's designee, rather than executive director or the executive director's designee, based on the findings of fact and conclusions

of law and the recommendations of the hearings examiner, by order to find that the reportable conduct has occurred. Requires the commissioner or the commissioner's designee, rather than the executive director or the executive director's designee, if the commissioner or the commissioner's designee, rather than the executive director or the executive director's designee, finds that reportable conduct has occurred, to issue an order approving the finding.

SECTION 18. Amends Sections 48.406(b) and (d), Human Resources Code, to make conforming changes.

SECTION 19. Section 48.407, Human Resources Code, to require the executive commissioner of the Health and Human Services Commission, rather than DHS, to adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

SECTION 20. Amends Section 48.408, Human Resources Code, to make conforming changes.

SECTION 21. Requires the executive commissioner of the Health and Human Services Commission, not later than September 1, 2010, to adopt rules necessary to implement the changes in law made by this Act. Makes application of this Act prospective to September 1, 2010.

SECTION 22. Effective date: upon passage or September 1, 2009.