

## **BILL ANALYSIS**

Senate Research Center

S.B. 806  
By: Nelson  
Health & Human Services  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, nursing facility administrators are not subject to enforcement actions for committing certain criminal offenses which would bar other nursing facility personnel from employment.

S.B. 806 amends current law relating to certain employee misconduct registries and to the imposition of a disciplinary action on a licensed nursing facility administrator and provides a penalty.

[**Note:** While the statutory reference in this bill is to the Texas Department of Human Services (TDHS), 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 TDHS.]

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Board of Human Services (board) is transferred to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 2 (Section 242.313, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Human Services is transferred to the executive commissioner in SECTION 2 (Section 242.313, Health and Safety Code), SECTION 3 (Section 242.316, Health and Safety Code), and SECTION 5 (Section 242.321, Health and Safety Code), SECTION 10 (Section 253.006, Health and Safety Code), SECTION 14 (Section 253.009, Health and Safety Code) and SECTION 20 (Section 48.407 Human Resources Code) of this bill.

Rulemaking authority previously granted to the board is modified in SECTION 4 (Section 242.318, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 242.002, Health and Safety Code, by amending Subdivision (4) and adding Subdivision (5-a), to redefine "department" and define "executive commissioner."

SECTION 2. Amends Sections 242.313(a), (c), (d), and (e), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, as follows:

(a) Authorizes the Department of Aging and Disability Services (DADS) to revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and the opportunity for a hearing, on proof of certain grounds, including that the license holder has been convicted in a court of competent jurisdiction of an offense listed in Section 250.006 (Convictions Barring Employment), Health and Safety Code. Makes nonsubstantive changes.

(c) Entitles a license holder to a hearing in accordance with rules adopted, rather than rules promulgated, by the executive commissioner of the Health and Human Services

Commission (executive commissioner), rather than the Texas Board of Human Services (board), before the sanction is imposed under this section.

(d) Requires the executive commissioner, rather than the board, by rule to adopt a broad schedule of sanctions for violations under this subchapter. Requires DADS to use the schedule for any sanction imposed in accordance with the rules, rather than for any sanction imposed as the result of a hearing conducted in accordance with the rules.

(e) Requires the executive commissioner, rather than the Texas Department of Human Services (TDHS), by rule to establish criteria to determine whether deficiencies from a facility's survey warrant action against an administrator.

SECTION 3. Amends Sections 242.316(c) and (d), Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, as follows:

(c) Requires DADS, if the person accepts the determination and the penalty recommended by DADS, or if the person fails to timely respond to the notice, to impose the recommended penalty.

(d) Requires DADS if a person requests a hearing, rather than if a person requests a hearing or fails to respond timely to a notice, to set a hearing and give notice of the hearing to the person. Requires that the hearing be held in accordance with the rules on contested case hearings adopted by the executive commissioner, rather than in accordance with DADS' rules.

SECTION 4. Amends Section 242.318(a) and (d), Health and Safety Code, as added by Section 2.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, as follows:

(a) Authorizes the board to revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and the opportunity for a hearing, on proof of certain grounds, including that the license holder has been convicted in a court of competent jurisdiction of an offense listed in Section 250.006. Makes nonsubstantive changes.

(d) Requires the board by rule to adopt a broad schedule of sanctions for violations under this subchapter. Requires the board to use the schedule for any sanction imposed, rather than for any sanction imposed as the result of a hearing conducted in accordance with the rules.

SECTION 5. Amends Sections 242.321(c) and (d), Health and Safety Code, as added by Section 2.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, as follows:

(c) Requires DADS, if the person accepts the determination and the penalty recommended by DADS, or if the person fails to timely respond to the notice, to impose the recommended penalty.

(d) Requires DADS, if the person requests a hearing, rather than if the person requests a hearing or fails to respond timely to a notice, to set a hearing and give notice of the hearing to the person. Requires that the hearing be held in accordance with the rules on contested case hearings adopted by the executive commissioner, rather than with DADS' rules on contested case hearings.

SECTION 6. 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 7. 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. Makes conforming and nonsubstantive changes.

(a-1) Creates this subsection from existing text.

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

(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 8. Amends Section 253.001, Health and Safety Code, by amending Subdivisions (1), (2), and (3), and adding Subdivision (3-a), to redefine "commissioner," "department," and "employee," and to define "executive commissioner."

SECTION 9. Amends Chapter 253, Health and Safety Code, by adding Section 253.0055, as follows:

Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. Requires the commissioner of aging and disability services (commissioner) or the commissioner's designee, if a finding of reportable conduct is the basis for an entry in 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) and the entry is subsequently removed from the nurse aide registry, to immediately remove the record of reportable conduct from the employee misconduct registry maintained under Section 253.007.

SECTION 10. Amends Section 253.006, Health and Safety Code, to require the executive commissioner, rather than TDHS, by rule to adopt procedures governing informal proceedings held in compliance with Section 2001.056 (Informal Disposition of Contested Case), Government Code.

SECTION 11. Amends Section 253.007(a), Health and Safety Code, as follows:

(a) Requires 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 reportable conduct, 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 12. 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 (DFPS), rather than the Department of Protective and Regulatory Services (DPRS), 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 13. 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, is authorized to 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. Deletes existing text requiring the facility or person, before a facility or a person exempt from licensing under Section 142.003(a)(19) (relating to person who provides certain services as exempt from licensing requirement), is authorized to hire an employee, to search the employee misconduct registry under this chapter and the nurse aide registry maintained under 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 or from a person exempt from licensing under Section 142.003(a)(19).

(b) Prohibits a facility or agency 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. Makes conforming changes.

(c) Requires the facility or agency, in addition to the initial verification of employability, to:

(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 14. 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, rather than TDHS about the employee misconduct registry, and that an employee is prohibited from being employed if the employee is listed in the registry. Makes conforming changes.

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

SECTION 15. Amends Section 48.401, Human Resources Code, as follows:

Sec. 48.401. DEFINITIONS. Redefines "agency" and "employee," and defines "commissioner." Deletes existing definition of "executive director." Makes nonsubstantive changes.

SECTION 16. Amends Section 48.403, Human Resources Code, as follows:

Sec. 48.403. FINDING. Requires DFPS, after an investigation and following the procedures of this subchapter, if DFPS 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 17. Amends Section 48.404(c), Human Resources Code, as follows:

(c) Requires the commissioner of DFPS (commissioner) or the commissioner'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. Makes conforming changes.

SECTION 18. Amends Sections 48.405, Human Resources Code, as follows:

Sec. 48.405. HEARING; ORDER. (a) Requires DFPS or its designee, if the employee requests a hearing, to set a hearing; give written notice of the hearing to the employee; and designate a hearings examiner to conduct the hearing.

(b) Requires the hearings examiner to make findings of fact and conclusions of law and to promptly issue to the commissioner 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 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, if the commissioner or the commissioner's designee finds that reportable conduct has occurred, to issue an order approving the finding. Makes conforming changes.

SECTION 19. Amends Sections 48.406(b) and (d), Human Resources Code, to make conforming changes.

SECTION 20. Amends Section 48.407, Human Resources Code, to require the executive commissioner, rather than TDHS, by rule to adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

SECTION 21. Amends Section 48.408, Human Resources Code, to make conforming changes.

SECTION 22. Provides that the change in law made by Sections 1 through 5 of this Act applies only to a disciplinary action imposed on or after the effective date of this Act.

SECTION 23. Requires the executive commissioner, not later than September 1, 2010, to 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. Makes application of this Act prospective to September 1, 2010.

SECTION 24. Effective date: upon passage or September 1, 2009.