

## **BILL ANALYSIS**

Senate Research Center

S.B. 1111  
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State Affairs  
3/16/2009  
As Filed

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

The Department of Aging and Disability Services (DADS) is statutorily authorized in certain circumstances to seek the placement of a court-appointed trustee to oversee the operations of a nursing facility, assisted living facility, or Intermediate Care Facility for the Mentally Retarded (ICF-MR). DADS is permitted to request a court-appointed trustee if the home is operating without a license; DADS has revoked or suspended the facility's license; suspension or revocation procedures are pending and DADS determines that there is imminent threat to the health and safety of the residents; DADS determines that an emergency exists that presents immediate threat to the health and safety of the residents; or the facility is closing and arrangements for relocation of the residents to another facility have not been made.

DADS has experienced trouble recruiting these court-appointed trustees. One issue often cited is that these trustees, while operating at the behest of the state, are not employees of the state and therefore do not have immunity from civil lawsuit. Historically, Travis County district courts have approved requests by court-appointed trustees for payment of incurred legal fees from the facilities' trust funds; however, such authority is not specifically stated in statute.

As proposed, S.B. 1111 provides that a DADS-requested, court-appointed trustee to a nursing facility, assisted living facility, or ICF-MR facility is not liable for civil damages for an action made in good faith in the official scope of the trustee's duties. Additionally, S.B. 1111 authorizes a court to order DADS to disburse emergency assistance funds to a court-appointed trustee, and authorizes trustees to use the funds to pay for actual legal fees incurred by the trustee in fulfilling the trustee's responsibilities.

[**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 (DADS), as the successor agency to TDHS.]

### **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 Subchapter D, Chapter 242, Health and Safety Code, by adding Section 242.0947, as follows:

Sec. 242.0947. **LIMITATION ON CIVIL LIABILITY.** Provides that a person appointed as trustee under Section 242.094 (Involuntary Appointment) is not liable for civil damages for an action made in good faith in the official scope of the trustee's duties.

SECTION 2. Amends Section 242.095, Health and Safety Code, by adding Subsection (a-1), to entitle a trustee to payment for actual legal fees incurred by the trustee in fulfilling the trustee's responsibilities.

SECTION 3. Amends Section 242.096, Health and Safety Code, by adding Subsection (c-1), as follows:

(c-1) Authorizes a trustee of a nursing or convalescent home to use the emergency assistance funds for actual legal fees incurred by the trustee in fulfilling the trustee's responsibilities. Authorizes a court to order the Texas Department of Human Services (TDHS) to disburse emergency assistance funds to a trustee to pay for actual legal fees incurred by the trustee in fulfilling the trustee's responsibilities.

SECTION 4. Amends Section 242.0965, Health and Safety Code, by adding Subsection (c-1), as follows:

(c-1) Authorizes a trustee of an assisted living facility to use the emergency assistance funds to pay for actual legal fees incurred by the trustee in fulfilling the trustee's responsibilities. Authorizes a court to order TDHS to disburse emergency assistance funds to a trustee to pay for actual legal fees incurred by the trustee in fulfilling the trustee's responsibilities.

SECTION 5. Amends Subchapter D, Chapter 252, Health and Safety Code, by adding Section 252.0935, as follows:

Sec. 252.0935. LIMITATION ON CIVIL LIABILITY. Provides that a person appointed as trustee under Section 252.093 (Involuntary Appointment) is not liable for civil damages for an action made in good faith in the official scope of the trustee's duties.

SECTION 6. Amends Section 252.095, Health and Safety Code, by adding Subsection (e), as follows:

(e) Authorizes a trustee to use the emergency assistance funds to pay for actual legal fees incurred by the trustee in fulfilling the trustee's responsibilities. Authorizes a court to order TDHS to disburse emergency assistance funds to a trustee to pay for actual legal fees incurred by the trustee in fulfilling the trustee's responsibilities.

SECTION 7. (a) Makes application of Sections 242.0947 and 252.0935, Health and Safety Code, as added by this Act, prospective.

(b) Makes application of Sections 242.095, 242.096, 242.0965, and 252.095, Health and Safety Code, as amended by this Act, prospective.

SECTION 8. Effective date: September 1, 2009.