

BILL ANALYSIS

C.S.S.B. 1432
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law defines exploitation as an assaultive offense rather than a fraud offense. State law that defines "deception" does not include electronic records in the definition, and the definition of "fraud" does not include exploitation of children or minors as a fraud offense.

C.S.S.B. 1432 recodifies provisions relating to exploitation under state law on fraud offenses. The bill includes electronic records in the definition of documents and authorizes them to be used as evidence. The bill defines "high managerial agent" and allows prosecutors to prosecute such persons for Medicaid fraud that is committed in a long-term care facility, and it enhances penalties for related offenders. The bill authorizes a Medicaid fraud offender to be prosecuted under each applicable provision of state law. The bill amends the statute of limitations for a Medicaid fraud offense and prohibits a nursing home from employing a person who has been convicted of exploitation of the elderly.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 1432 amends Article 12.01, Code of Criminal Procedure, as amended by Chapters 285 (H.B. 716), 593 (H.B. 8), 640 (H.B. 887), and 841 (H.B. 959), Acts of the 80th Legislature, Regular Session, 2007, to authorize felony indictments to be presented seven years from the date of the commission of an offense of Medicaid fraud, and not afterward. The bill removes from the felony indictments authorized to be presented ten years from the 18th birthday of the victim of an offense indecency with a child, sexual assault, or aggravated sexual assault.

C.S.S.B. 1432 amends the Health and Safety Code to prohibit a person for whom a long-term care health facility is entitled to obtain criminal history record information from being employed in a facility if the person has been convicted of an offense of exploitation of a child, elderly individual, or disabled individual.

C.S.S.B. 1432 amends the Penal Code to remove exploitation from those actions that constitute an offense by a person if the person is an owner, operator, or employee of a group home, nursing facility, assisted living facility, intermediate care facility for persons with mental retardation, or other institutional care facility and the person commits the action intentionally, knowingly, recklessly, or with criminal negligence by omission to a child, elderly individual, or disabled resident of the home or facility. The bill instead makes it a third degree felony offense to intentionally, knowingly, or recklessly cause the exploitation of a child, elderly individual, or disabled individual. The bill authorizes a person subject to prosecution under this provision or another statute to be prosecuted under either or both statutes. The bill specifies that a defendant's right to a severance of multiple offenses does not apply to such an offense. The bill requires sentences to run concurrently for a criminal episode prosecuted under multiple statutes.

C.S.S.B. 1432 enhances the punishment prescribed for a Medicaid fraud offense to the next highest category of offense if it is shown beyond a reasonable doubt on the trial of the offense that the actor was a provider or high managerial agent at the time of the offense. The bill includes a Medicaid fraud offense in the list of organized crime offenses a person commits or conspires to commit with the intent to establish, maintain, or participate in a combination or in the profits of a combination or as a member of a criminal street gang.

C.S.S.B. 1432 provides references to current statute to provide the meaning for "child," "elderly individual," and "disabled individual," and defines "high material agent" and "exploitation." The bill defines "document" to include electronically stored data or other information that is retrievable in a readable, perceivable form.

C.S.S.B. 1432 repeals Section 22.04(c)(4), Penal Code, defining "exploitation" for the purposes of provisions relating to injury to a child, an elderly individual, or a disabled individual and makes conforming changes.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1432 adds a provision not in the original authorizing felony indictments to be presented seven years from the date of the commission of an offense of Medicaid fraud, and not afterward. The substitute adds a provision not in the original removing from the felony indictments authorized to be presented ten years from the 18th birthday of the victim of an offense indecency with a child, sexual assault, or aggravated sexual assault.

C.S.S.B. 1432 adds a provision not in the original that prohibits a person for whom a long-term care health facility is entitled to obtain criminal history record information from being employed in a facility if the person has been convicted of an offense of exploitation of a child, elderly individual, or disabled individual.