

1-1 By: Guillen, et al. (Senate Sponsor - Carona) H.B. No. 2328
1-2 (In the Senate - Received from the House May 1, 2009;
1-3 May 6, 2009, read first time and referred to Committee on Criminal
1-4 Justice; May 21, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 May 21, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2328 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to regulating employment at or by certain facilities
1-11 serving the elderly or persons with disabilities and to certain
1-12 acts committed against those individuals.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 250.006(a), Health and Safety Code, is
1-15 amended to read as follows:

1-16 (a) A person for whom the facility is entitled to obtain
1-17 criminal history record information may not be employed in a
1-18 facility if the person has been convicted of an offense listed in
1-19 this subsection:

1-20 (1) an offense under Chapter 19, Penal Code (criminal
1-21 homicide);

1-22 (2) an offense under Chapter 20, Penal Code
1-23 (kidnapping and unlawful restraint);

1-24 (3) an offense under Section 21.02, Penal Code
1-25 (continuous sexual abuse of young child or children), or Section
1-26 21.11, Penal Code (indecent with a child);

1-27 (4) an offense under Section 22.011, Penal Code
1-28 (sexual assault);

1-29 (5) an offense under Section 22.02, Penal Code
1-30 (aggravated assault);

1-31 (6) an offense under Section 22.04, Penal Code (injury
1-32 to a child, elderly individual, or disabled individual);

1-33 (7) an offense under Section 22.041, Penal Code
1-34 (abandoning or endangering child);

1-35 (8) an offense under Section 22.08, Penal Code (aiding
1-36 suicide);

1-37 (9) an offense under Section 25.031, Penal Code
1-38 (agreement to abduct from custody);

1-39 (10) an offense under Section 25.08, Penal Code (sale
1-40 or purchase of a child);

1-41 (11) an offense under Section 28.02, Penal Code
1-42 (arson);

1-43 (12) an offense under Section 29.02, Penal Code
1-44 (robbery);

1-45 (13) an offense under Section 29.03, Penal Code
1-46 (aggravated robbery);

1-47 (14) an offense under Section 21.08, Penal Code
1-48 (indecent exposure);

1-49 (15) an offense under Section 21.12, Penal Code
1-50 (improper relationship between educator and student);

1-51 (16) an offense under Section 21.15, Penal Code
1-52 (improper photography or visual recording);

1-53 (17) an offense under Section 22.05, Penal Code
1-54 (deadly conduct);

1-55 (18) an offense under Section 22.021, Penal Code
1-56 (aggravated sexual assault);

1-57 (19) an offense under Section 22.07, Penal Code
1-58 (terroristic threat);

1-59 (20) an offense under Section 33.021, Penal Code
1-60 (online solicitation of a minor);

1-61 (21) an offense under Section 34.02, Penal Code (money
1-62 laundering);

1-63 (22) an offense under Section 35A.02, Penal Code

2-1 (Medicaid fraud);
2-2 (23) an offense under Section 36.06, Penal Code
2-3 (obstruction or retaliation);
2-4 (24) an offense under Section 42.09, Penal Code
2-5 (cruelty to animals); or
2-6 (25) [~~24~~] a conviction under the laws of another
2-7 state, federal law, or the Uniform Code of Military Justice for an
2-8 offense containing elements that are substantially similar to the
2-9 elements of an offense listed by this subsection.

2-10 SECTION 2. The heading to Chapter 253, Health and Safety
2-11 Code, is amended to read as follows:

2-12 CHAPTER 253. CERTAIN EMPLOYEE MISCONDUCT; REGISTRY

2-13 SECTION 3. Section 253.001(5), Health and Safety Code, is
2-14 amended to read as follows:

2-15 (5) "Reportable conduct" includes:

2-16 (A) abuse or neglect that causes or may cause
2-17 death or harm to a resident or consumer of a facility;

2-18 (B) sexual abuse of a resident or consumer of a
2-19 facility;

2-20 (C) financial exploitation of a resident or
2-21 consumer of a facility in an amount of \$25 or more; [~~and~~]

2-22 (D) emotional, verbal, or psychological abuse
2-23 that causes harm to a resident or consumer of a facility; and

2-24 (E) solicitation of a gift from a resident or
2-25 consumer of a facility.

2-26 SECTION 4. Section 32.21, Penal Code, is amended by
2-27 amending Subsection (c) and adding Subsection (e-1) to read as
2-28 follows:

2-29 (c) Except as provided by in Subsections (d), [~~and~~] (e),
2-30 and (e-1), an offense under this section is a Class A misdemeanor.

2-31 (e-1) An offense under this section is increased to the next
2-32 higher category of offense if it is shown on the trial of the
2-33 offense that the offense was committed against an elderly
2-34 individual as defined by Section 22.04.

2-35 SECTION 5. Section 32.31(d), Penal Code, is amended to read
2-36 as follows:

2-37 (d) An offense under this section is a state jail felony,
2-38 except that the offense is a felony of the third degree if it is
2-39 shown on the trial of the offense that the offense was committed
2-40 against an elderly individual as defined by Section 22.04.

2-41 SECTION 6. Section 32.51, Penal Code, is amended by adding
2-42 Subsection (c-1) to read as follows:

2-43 (c-1) An offense described for purposes of punishment by
2-44 Subsections (c)(1)-(3) is increased to the next higher category of
2-45 offense if it is shown on the trial of the offense that the offense
2-46 was committed against an elderly individual as defined by Section
2-47 22.04.

2-48 SECTION 7. The change in law made by this Act in amending
2-49 Sections 32.21, 32.31, and 32.51, Penal Code, applies only to an
2-50 offense committed on or after the effective date of this Act. An
2-51 offense committed before the effective date of this Act is governed
2-52 by the law in effect when the offense was committed, and the former
2-53 law is continued in effect for that purpose. For the purposes of
2-54 this section, an offense was committed before the effective date of
2-55 this Act if any element of the offense occurred before that date.

2-56 SECTION 8. This Act takes effect September 1, 2009.

2-57 * * * * *