

By: Nelson

S.B. No. 785

A BILL TO BE ENTITLED

AN ACT

relating to the employee misconduct registry and employee certification posting requirements for certain facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 242, Health and Safety Code, is amended by adding Section 242.053 to read as follows:

Sec. 242.053. CERTIFIED NURSE AIDE REGISTRATION. Each institution shall make available on request a copy of the registration issued by the department for each certified nurse aide employed by or working at the facility.

SECTION 2. The heading to Section 250.003, Health and Safety Code, is amended to read as follows:

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

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

(a) A facility may not employ an applicant:

(1) [~~a person~~] if the facility determines, as a result of a criminal history check, that the applicant [~~a person~~] 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;

(2) [~~and~~] if the applicant is a nurse aide, until the

1 facility further verifies that the applicant is listed in the nurse
2 aide registry; and

3 (3) until the facility verifies that the applicant is
4 not designated in the registry maintained under this chapter or in
5 the employee misconduct registry maintained under Section 253.007
6 as having a finding entered into the registry concerning abuse,
7 neglect, or mistreatment of a consumer of a facility, or
8 misappropriation of a consumer's property.

9 (a-1) Except for an applicant for employment at or an
10 employee of a facility licensed under Chapter 242 or 247, a person
11 licensed under another law of this state is exempt from the
12 requirements of this chapter.

13 (d) In addition to the initial verification of
14 employability, a facility shall annually search the nurse aide
15 registry maintained under this chapter and the employee misconduct
16 registry maintained under Section 253.007 to determine whether any
17 employee of the facility is designated in either registry as having
18 abused, neglected, or exploited a resident or consumer of a
19 facility or an individual receiving services from a facility.

20 SECTION 4. Section 253.001, Health and Safety Code, is
21 amended by amending Subdivisions (1), (2), and (3) and adding
22 Subdivision (3-a) to read as follows:

23 (1) "Commissioner" means the commissioner of aging and
24 disability [~~human~~] services.

25 (2) "Department" means the [~~Texas~~] Department of Aging
26 and Disability [~~Human~~] Services.

27 (3) "Employee" means a person who:

- 1 (A) works at a facility;
- 2 (B) is an individual who provides personal care
3 services, active treatment, or any other personal services to a
4 resident or consumer of the facility; and
- 5 (C) is not licensed by an agency of the state to
6 perform the services the employee performs at the facility or is~~+~~
7 ~~and~~
- 8 [~~(D) is not~~] a nurse aide employed by a [~~nursing~~]
9 facility.

10 (3-a) "Executive commissioner" means the executive
11 commissioner of the Health and Human Services Commission.

12 SECTION 5. The heading to Section 253.003, Health and
13 Safety Code, is amended to read as follows:

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

15 SECTION 6. Subsection (a), Section 253.003, Health and
16 Safety Code, is amended to read as follows:

17 (a) If, after an investigation, the department determines
18 that the reportable conduct occurred, the department shall:

19 (1) give to the employee written notice of the
20 department's findings that~~[-. The notice]~~ must include:

21 (A) [(1)] a brief summary of the department's
22 findings; and

23 (B) [(2)] a statement of the person's right to a
24 hearing on the occurrence of the reportable conduct; and

25 (2) immediately record the reportable conduct in the
26 registry in accordance with Section 253.007 with a notation that
27 the finding is pending a final determination.

1 SECTION 7. Section 253.004, Health and Safety Code, is
2 amended by amending Subsection (c) and adding Subsection (d) to
3 read as follows:

4 (c) Based on the findings of fact and conclusions of law and
5 the recommendations of the hearings examiner, the commissioner or
6 the commissioner's designee by order may find that the reportable
7 conduct has occurred. If the commissioner or the commissioner's
8 designee finds that the reportable conduct has occurred, the
9 commissioner or the commissioner's designee shall:

10 (1) issue an order approving the determination; and

11 (2) record the final determination of reportable
12 conduct in the registry under Section 253.007.

13 (d) If the commissioner or the commissioner's designee
14 finds that the reportable conduct has not occurred based on the
15 findings of fact and conclusions of law and the recommendations of
16 the hearings examiner, the commissioner or the commissioner's
17 designee shall:

18 (1) issue an order rejecting the determination; and

19 (2) immediately remove the record of the reportable
20 conduct from the registry maintained under Section 253.007.

21 SECTION 8. Subsections (a), (b), and (d), Section 253.005,
22 Health and Safety Code, are amended to read as follows:

23 (a) The department shall give notice of the order under
24 Section 253.004(c) [~~253.004~~] to the employee alleged to have
25 committed the reportable conduct. The notice must include:

26 (1) separate statements of the findings of fact and
27 conclusions of law;

1 (2) a statement of the right of the employee to
2 judicial review of the order; and

3 (3) a statement that the final determination of the
4 reportable conduct has been [~~will be~~] recorded in the registry
5 under Section 253.007 and will be retained in the registry if:

6 (A) the employee does not request judicial review
7 of the determination; or

8 (B) the determination is sustained by the court.

9 (b) Not later than the 30th day after the date on which the
10 decision becomes final as provided by Chapter 2001, Government
11 Code, the employee may file a petition for judicial review
12 contesting the finding of the reportable conduct. If the employee
13 does not request judicial review of the determination, the
14 [~~department shall~~] record of the final determination of the
15 reportable conduct shall be retained in the registry under Section
16 253.007.

17 (d) If the court sustains the finding of the occurrence of
18 the reportable conduct, the department shall note that the court
19 sustained the final determination of [~~record~~] the reportable
20 conduct in the registry under Section 253.007. If the court
21 overturns the finding of the occurrence of the reportable conduct,
22 the department shall immediately remove the record of the
23 reportable conduct from the registry under Section 253.007.

24 SECTION 9. Section 253.006, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 253.006. INFORMAL PROCEEDINGS. The executive
27 commissioner [~~department~~] by rule shall adopt procedures governing

1 informal proceedings held in compliance with Section 2001.056,
2 Government Code.

3 SECTION 10. Subsection (a), Section 253.007, Health and
4 Safety Code, is amended to read as follows:

5 (a) The department shall establish an employee misconduct
6 registry. If the department in accordance with this chapter
7 finds that an employee of a facility has committed [~~commits~~]
8 reportable conduct, the department shall make a record of the
9 employee's name, the employee's address, the employee's social
10 security number, the name of the facility, the address of the
11 facility, the date the reportable conduct occurred, and a
12 description of the reportable conduct.

13 SECTION 11. Section 253.0075, Health and Safety Code, is
14 amended to read as follows:

15 Sec. 253.0075. RECORDING REPORTABLE CONDUCT REPORTED BY
16 DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~] SERVICES. On
17 receipt of a finding of an employee's reportable conduct by the
18 Department of Family and Protective [~~and Regulatory~~] Services under
19 Subchapter I, Chapter 48, Human Resources Code, the department
20 shall record the information in the employee misconduct registry in
21 accordance with Section 253.007.

22 SECTION 12. Section 253.008, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL
25 SEARCH. (a) Before a facility as defined in this chapter or an
26 agency as defined in Section 48.401, Human Resources Code, [~~or a~~
27 ~~person exempt from licensing under Section 142.003(a)(19)] may hire~~

1 an employee, the facility or agency [~~person~~] shall search the
2 employee misconduct registry under this chapter and the nurse aide
3 registry maintained under Chapter 250 as required by the Omnibus
4 Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to
5 determine whether the applicant for employment is designated in
6 either registry as having abused, neglected, or exploited a
7 resident or consumer of a facility or agency or an individual
8 receiving services from a facility or agency [~~from a person exempt~~
9 ~~from licensing under Section 142.003(a)(19)]].~~

10 (b) A facility or agency [~~a person exempt from licensing~~
11 ~~under Section 142.003(a)(19)] may not employ a person who is listed
12 in either registry as having abused, neglected, or exploited a
13 resident or consumer of a facility or agency or an individual
14 receiving services from a facility or agency. This subsection does
15 not prohibit a facility or agency from employing or continuing to
16 employ a person whose only record of reportable conduct included in
17 the registry is pending a final determination [~~from a person exempt~~
18 ~~from licensing under Section 142.003(a)(19)]].~~~~

19 (c) In addition to the initial verification of
20 employability, a facility or agency shall annually search the
21 employee misconduct registry and the nurse aide registry maintained
22 under Chapter 250 to determine whether any employee of the facility
23 or agency is designated in either registry as having abused,
24 neglected, or exploited a resident or consumer of a facility or
25 agency or an individual receiving services from a facility or
26 agency.

27 SECTION 13. Section 253.009, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 253.009. NOTIFICATION. (a) Each facility as defined
3 in this chapter and each agency as defined in Section 48.401, Human
4 Resources Code, [and each person exempt from licensing under
5 Section 142.003(a)(19)] shall notify its employees in a manner
6 prescribed by the Department of Aging and Disability Services
7 ~~[department]~~:

8 (1) about the employee misconduct registry; ~~and~~

9 (2) that an employee may not be employed if the
10 employee is listed in the registry after a final determination; and

11 (3) that a facility or agency is not prohibited from
12 employing an employee listed in the registry pending a final
13 determination.

14 (b) The executive commissioner ~~[department]~~ shall adopt
15 rules to implement this section.

16 SECTION 14. Section 48.401, Human Resources Code, is
17 amended to read as follows:

18 Sec. 48.401. DEFINITIONS. In this subchapter:

19 (1) "Agency" means:

20 (A) an entity licensed under Chapter 142, Health
21 and Safety Code; ~~or~~

22 (B) a person exempt from licensing under Section
23 142.003(a)(19), Health and Safety Code; or

24 (C) an entity investigated by the department
25 under Subchapter F or under Section 261.404, Family Code.

26 (2) "Commissioner" means the commissioner of the
27 Department of Family and Protective Services.

1 (3) "Employee" means a person who:

2 (A) works for an agency;

3 (B) provides personal care services, active
4 treatment, or any other personal services to an individual
5 receiving agency services or to an individual who is a child for
6 whom an investigation is authorized under Section 261.404, Family
7 Code; and

8 (C) is not licensed by the state to perform the
9 services the person performs for the agency.

10 (4) [~~(3)~~] "Employee misconduct registry" means the
11 employee misconduct registry established under Chapter 253, Health
12 and Safety Code.

13 ~~[(4) "Executive director" means the executive~~
14 ~~director of the Department of Protective and Regulatory Services.]~~

15 (5) "Reportable conduct" includes:

16 (A) abuse or neglect that causes or may cause
17 death or harm to an individual receiving agency services;

18 (B) sexual abuse of an individual receiving
19 agency services;

20 (C) financial exploitation of an individual
21 receiving agency services in an amount of \$25 or more; and

22 (D) emotional, verbal, or psychological abuse
23 that causes harm to an individual receiving agency services.

24 SECTION 15. Section 48.403, Human Resources Code, is
25 amended to read as follows:

26 Sec. 48.403. FINDING. After an investigation and following
27 the procedures of this subchapter, if the department confirms or

1 validates the occurrence of reportable conduct by an employee, the
2 department shall immediately forward the finding to the [~~Texas~~]
3 Department of Aging and Disability [~~Human~~] Services to record the
4 reportable conduct in the employee misconduct registry under
5 Section 253.007, Health and Safety Code.

6 SECTION 16. Subsection (c), Section 48.404, Human Resources
7 Code, is amended to read as follows:

8 (c) If the employee notified of the violation accepts the
9 finding of the department or fails to timely respond to the notice,
10 the commissioner [~~executive director~~] or the commissioner's
11 [~~executive director's~~] designee shall issue an order approving the
12 finding and ordering that the department's findings be forwarded to
13 the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services to
14 be recorded in the employee misconduct registry under Section
15 253.007, Health and Safety Code.

16 SECTION 17. Subsections (b) and (c), Section 48.405, Human
17 Resources Code, are amended to read as follows:

18 (b) The hearings examiner shall make findings of fact and
19 conclusions of law and shall promptly issue to the commissioner
20 [~~executive director~~] or the commissioner's [~~executive director's~~]
21 designee a proposal for decision as to the occurrence of the
22 reportable conduct.

23 (c) Based on the findings of fact and conclusions of law and
24 the recommendations of the hearings examiner, the commissioner
25 [~~executive director~~] or the commissioner's [~~executive director's~~]
26 designee by order may find that the reportable conduct has
27 occurred. If the commissioner [~~executive director~~] or the

1 commissioner's [~~executive director's~~] designee finds that
2 reportable conduct has occurred, the commissioner [~~executive~~
3 ~~director~~] or the commissioner's [~~executive director's~~] designee
4 shall issue an order approving the finding.

5 SECTION 18. Subsections (b) and (d), Section 48.406, Human
6 Resources Code, are amended to read as follows:

7 (b) Not later than the 30th day after the date the decision
8 becomes final as provided by Chapter 2001, Government Code, the
9 employee may file a petition for judicial review contesting the
10 finding of the reportable conduct. If the employee does not request
11 judicial review of the finding, the department shall send a record
12 of the department's findings to the [~~Texas~~] Department of Aging and
13 Disability [~~Human~~] Services to record in the employee misconduct
14 registry under Section 253.007, Health and Safety Code.

15 (d) If the court sustains the finding of the occurrence of
16 the reportable conduct, the department shall forward the finding of
17 reportable conduct to the [~~Texas~~] Department of Aging and
18 Disability [~~Human~~] Services to record the reportable conduct in the
19 employee misconduct registry under Section 253.007, Health and
20 Safety Code.

21 SECTION 19. Section 48.407, Human Resources Code, is
22 amended to read as follows:

23 Sec. 48.407. INFORMAL PROCEEDINGS. The executive
24 commissioner [~~department~~] by rule shall adopt procedures governing
25 informal proceedings held in compliance with Section 2001.056,
26 Government Code.

27 SECTION 20. Section 48.408, Human Resources Code, is

1 amended to read as follows:

2 Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT
3 REGISTRY. (a) When the department forwards a finding of
4 reportable conduct to the [~~Texas~~] Department of Aging and
5 Disability [~~Human~~] Services for recording in the employee
6 misconduct registry, the department shall provide the employee's
7 name, the employee's address, the employee's social security
8 number, if available, the name of the agency, the address of the
9 agency, the date the reportable conduct occurred, and a description
10 of the reportable conduct.

11 (b) If a governmental agency of another state or the federal
12 government finds that an employee has committed an act that
13 constitutes reportable conduct, the department may send to the
14 [~~Texas~~] Department of Aging and Disability [~~Human~~] Services, for
15 recording in the employee misconduct registry, the employee's name,
16 the employee's address, the employee's social security number, if
17 available, the name of the agency, the address of the agency, the
18 date of the act, and a description of the act.

19 SECTION 21. Not later than September 1, 2010, the executive
20 commissioner of the Health and Human Services Commission shall
21 adopt the rules necessary to implement the changes in law made by
22 this Act. The changes in law made by this Act apply only to
23 reportable conduct that occurs on or after September 1, 2010.
24 Reportable conduct that occurs before that date is governed by the
25 law in effect immediately before the effective date of this Act, and
26 that law is continued in effect for that purpose.

27 SECTION 22. This Act does not make an appropriation. A

1 provision in this Act that creates a new governmental program,
2 creates a new entitlement, or imposes a new duty on a governmental
3 entity is not mandatory during a fiscal period for which the
4 legislature has not made a specific appropriation to implement the
5 provision.

6 SECTION 23. This Act takes effect immediately if it
7 receives a vote of two-thirds of all the members elected to each
8 house, as provided by Section 39, Article III, Texas Constitution.
9 If this Act does not receive the vote necessary for immediate
10 effect, this Act takes effect September 1, 2009.