

By: Nelson

S.B. No. 785

Substitute the following for S.B. No. 785:

By: Rose

C.S.S.B. No. 785

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the employee misconduct registry and employee
3 certification posting requirements for certain facilities.

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

5 SECTION 1. The heading to Section 250.003, Health and
6 Safety Code, is amended to read as follows:

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

9 SECTION 2. Section 250.003, Health and Safety Code, is
10 amended by amending Subsection (a) and adding Subsections (a-1) and
11 (d) to read as follows:

12 (a) A facility may not employ an applicant:

13 (1) [~~a person~~] if the facility determines, as a result
14 of a criminal history check, that the applicant [~~a person~~] has been
15 convicted of an offense listed in this chapter that bars employment
16 or that a conviction is a contraindication to employment with the
17 consumers the facility serves;

18 (2) [~~, and~~] if the applicant is a nurse aide, until the
19 facility further verifies that the applicant is listed in the nurse
20 aide registry; and

21 (3) until the facility verifies that the applicant is
22 not designated in the registry maintained under this chapter or in
23 the employee misconduct registry maintained under Section 253.007
24 as having a finding entered into the registry concerning abuse,

1 neglect, or mistreatment of a consumer of a facility, or
2 misappropriation of a consumer's property.

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

7 (d) In addition to the initial verification of
8 employability, a facility shall:

9 (1) annually search the nurse aide registry maintained
10 under this chapter and the employee misconduct registry maintained
11 under Section 253.007 to determine whether any employee of the
12 facility is designated in either registry as having abused,
13 neglected, or exploited a resident or consumer of a facility or an
14 individual receiving services from a facility; and

15 (2) maintain in each employee's personnel file a copy
16 of the results of the search conducted under Subdivision (1).

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

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

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

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

25 (A) works at a facility;

26 (B) is an individual who provides personal care
27 services, active treatment, or any other personal services to a

1 resident or consumer of the facility; and

2 (C) is not licensed by an agency of the state to
3 perform the services the employee performs at the facility or is [+
4 ~~and~~

5 [~~(D) is not~~] a nurse aide employed by a [~~nursing~~]
6 facility.

7 (3-a) "Executive commissioner" means the executive
8 commissioner of the Health and Human Services Commission.

9 SECTION 4. Chapter 253, Health and Safety Code, is amended
10 by adding Section 253.0055 to read as follows:

11 Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. If a finding
12 of reportable conduct is the basis for an entry in the nurse aide
13 registry maintained under Chapter 250, and the entry is
14 subsequently removed from the nurse aide registry, the commissioner
15 or the commissioner's designee shall immediately remove the record
16 of reportable conduct from the employee misconduct registry
17 maintained under Section 253.007.

18 SECTION 5. Section 253.006, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 253.006. INFORMAL PROCEEDINGS. The executive
21 commissioner [~~department~~] by rule shall adopt procedures governing
22 informal proceedings held in compliance with Section 2001.056,
23 Government Code.

24 SECTION 6. Subsection (a), Section 253.007, Health and
25 Safety Code, is amended to read as follows:

26 (a) The department shall establish an employee misconduct
27 registry. If the department in accordance with this chapter finds

1 that an employee of a facility has committed [~~commits~~] reportable
2 conduct, the department shall make a record of the employee's name,
3 the employee's address, the employee's social security number, the
4 name of the facility, the address of the facility, the date the
5 reportable conduct occurred, and a description of the reportable
6 conduct.

7 SECTION 7. Section 253.0075, Health and Safety Code, is
8 amended to read as follows:

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

16 SECTION 8. Section 253.008, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL
19 SEARCH. (a) Before a facility as defined in this chapter or an
20 agency as defined in Section 48.401, Human Resources Code, [~~or a~~
21 ~~person exempt from licensing under Section 142.003(a)(19)~~] may hire
22 an employee, the facility or agency [~~person~~] shall search the
23 employee misconduct registry under this chapter and the nurse aide
24 registry maintained under Chapter 250 as required by the Omnibus
25 Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to
26 determine whether the applicant for employment is designated in
27 either registry as having abused, neglected, or exploited a

1 resident or consumer of a facility or agency or an individual
2 receiving services from a facility or agency [~~from a person exempt~~
3 ~~from licensing under Section 142.003(a)(19)~~].

4 (b) A facility or agency [~~a person exempt from licensing~~
5 ~~under Section 142.003(a)(19)~~] may not employ a person who is listed
6 in 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 (c) In addition to the initial verification of
11 employability, a facility or agency shall:

12 (1) annually search the employee misconduct registry
13 and the nurse aide registry maintained under Chapter 250 to
14 determine whether any employee of the facility or agency is
15 designated in either registry as having abused, neglected, or
16 exploited a resident or consumer of a facility or agency or an
17 individual receiving services from a facility or agency; and

18 (2) maintain in each employee's personnel file a copy
19 of the results of the search conducted under Subdivision (1).

20 SECTION 9. Section 253.009, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 253.009. NOTIFICATION. (a) Each facility as defined
23 in this chapter and each agency as defined in Section 48.401, Human
24 Resources Code, [and each person exempt from licensing under
25 Section 142.003(a)(19)] shall notify its employees in a manner
26 prescribed by the Department of Aging and Disability Services
27 [department]:

- 1 (1) about the employee misconduct registry; and
2 (2) that an employee may not be employed if the
3 employee is listed in the registry.

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

6 SECTION 10. Section 48.401, Human Resources Code, is
7 amended to read as follows:

8 Sec. 48.401. DEFINITIONS. In this subchapter:

9 (1) "Agency" means:

10 (A) an entity licensed under Chapter 142, Health
11 and Safety Code; [~~or~~]

12 (B) a person exempt from licensing under Section
13 142.003(a)(19), Health and Safety Code; or

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

16 (2) "Commissioner" means the commissioner of the
17 Department of Family and Protective Services.

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

19 (A) works for an agency;

20 (B) provides personal care services, active
21 treatment, or any other personal services to an individual
22 receiving agency services or to an individual who is a child for
23 whom an investigation is authorized under Section 261.404, Family
24 Code; and

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

27 (4) [~~(3)~~] "Employee misconduct registry" means the

1 employee misconduct registry established under Chapter 253, Health
2 and Safety Code.

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

5 (5) "Reportable conduct" includes:

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

8 (B) sexual abuse of an individual receiving
9 agency services;

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

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

14 SECTION 11. Section 48.403, Human Resources Code, is
15 amended to read as follows:

16 Sec. 48.403. FINDING. After an investigation and following
17 the procedures of this subchapter, if the department confirms or
18 validates the occurrence of reportable conduct by an employee, the
19 department shall immediately forward the finding to the [~~Texas~~
20 Department of Aging and Disability [~~Human~~] Services to record the
21 reportable conduct in the employee misconduct registry under
22 Section 253.007, Health and Safety Code.

23 SECTION 12. Subsection (c), Section 48.404, Human Resources
24 Code, is amended to read as follows:

25 (c) If the employee notified of the violation accepts the
26 finding of the department or fails to timely respond to the notice,
27 the commissioner [~~executive director~~] or the commissioner's

1 ~~[executive director's]~~ designee shall issue an order approving the
2 finding and ordering that the department's findings be forwarded to
3 the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services to
4 be recorded in the employee misconduct registry under Section
5 253.007, Health and Safety Code.

6 SECTION 13. Section 48.405, Human Resources Code, is
7 amended to read as follows:

8 Sec. 48.405. HEARING; ORDER. (a) If the employee
9 requests a hearing, the department or its designee shall:

10 (1) set a hearing;

11 (2) give written notice of the hearing to the
12 employee; and

13 (3) designate a hearings examiner to conduct the
14 hearing.

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

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

1 shall issue an order approving the finding.

2 SECTION 14. Subsections (b) and (d), Section 48.406, Human
3 Resources Code, are amended to read as follows:

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

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

18 SECTION 15. Section 48.407, Human Resources Code, is
19 amended to read as follows:

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

24 SECTION 16. Section 48.408, Human Resources Code, is
25 amended to read as follows:

26 Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT
27 REGISTRY. (a) When the department forwards a finding of

1 reportable conduct to the [~~Texas~~] Department of Aging and
2 Disability [~~Human~~] Services for recording in the employee
3 misconduct registry, the department shall provide the employee's
4 name, the employee's address, the employee's social security
5 number, if available, the name of the agency, the address of the
6 agency, the date the reportable conduct occurred, and a description
7 of the reportable conduct.

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

16 SECTION 17. Not later than September 1, 2010, the executive
17 commissioner of the Health and Human Services Commission shall
18 adopt the rules necessary to implement the changes in law made by
19 this Act. The changes in law made by this Act apply only to
20 reportable conduct that occurs on or after September 1, 2010.
21 Reportable conduct that occurs before that date is governed by the
22 law in effect immediately before the effective date of this Act, and
23 that law is continued in effect for that purpose.

24 SECTION 18. This Act does not make an appropriation. A
25 provision in this Act that creates a new governmental program,
26 creates a new entitlement, or imposes a new duty on a governmental
27 entity is not mandatory during a fiscal period for which the

1 legislature has not made a specific appropriation to implement the
2 provision.

3 SECTION 19. This Act takes effect immediately if it
4 receives a vote of two-thirds of all the members elected to each
5 house, as provided by Section 39, Article III, Texas Constitution.
6 If this Act does not receive the vote necessary for immediate
7 effect, this Act takes effect September 1, 2009.