

1-1 By: Nelson S.B. No. 785
1-2 (In the Senate - Filed February 11, 2009; March 4, 2009, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 15, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 15, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 785 By: Patrick

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

1-10 relating to the employee misconduct registry and employee
1-11 certification posting requirements for certain facilities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subchapter B, Chapter 242, Health and Safety
1-14 Code, is amended by adding Section 242.053 to read as follows:

1-15 Sec. 242.053. CERTIFIED NURSE AIDE REGISTRATION. Each
1-16 institution shall make available on request a copy of the
1-17 registration issued by the department for each certified nurse aide
1-18 employed by or working at the facility.

1-19 SECTION 2. The heading to Section 250.003, Health and
1-20 Safety Code, is amended to read as follows:

1-21 Sec. 250.003. VERIFICATION OF EMPLOYABILITY; ANNUAL
1-22 SEARCH; DISCHARGE.

1-23 SECTION 3. Section 250.003, Health and Safety Code, is
1-24 amended by amending Subsection (a) and adding Subsections (a-1) and
1-25 (d) to read as follows:

1-26 (a) A facility may not employ an applicant:

1-27 (1) [a person] if the facility determines, as a result
1-28 of a criminal history check, that the applicant [a person] has been
1-29 convicted of an offense listed in this chapter that bars employment
1-30 or that a conviction is a contraindication to employment with the
1-31 consumers the facility serves;

1-32 (2) [, and] if the applicant is a nurse aide, until the
1-33 facility further verifies that the applicant is listed in the nurse
1-34 aide registry; and

1-35 (3) until the facility verifies that the applicant is
1-36 not designated in the registry maintained under this chapter or in
1-37 the employee misconduct registry maintained under Section 253.007
1-38 as having a finding entered into the registry concerning abuse,
1-39 neglect, or mistreatment of a consumer of a facility, or
1-40 misappropriation of a consumer's property.

1-41 (a-1) Except for an applicant for employment at or an
1-42 employee of a facility licensed under Chapter 242 or 247, a person
1-43 licensed under another law of this state is exempt from the
1-44 requirements of this chapter.

1-45 (d) In addition to the initial verification of
1-46 employability, a facility shall annually search the nurse aide
1-47 registry maintained under this chapter and the employee misconduct
1-48 registry maintained under Section 253.007 to determine whether any
1-49 employee of the facility is designated in either registry as having
1-50 abused, neglected, or exploited a resident or consumer of a
1-51 facility or an individual receiving services from a facility.

1-52 SECTION 4. Section 253.001, Health and Safety Code, is
1-53 amended by amending Subdivisions (1), (2), and (3) and adding
1-54 Subdivision (3-a) to read as follows:

1-55 (1) "Commissioner" means the commissioner of aging and
1-56 disability [human] services.

1-57 (2) "Department" means the [~~Texas~~] Department of Aging
1-58 and Disability [Human] Services.

1-59 (3) "Employee" means a person who:

1-60 (A) works at a facility;

1-61 (B) is an individual who provides personal care
1-62 services, active treatment, or any other personal services to a
1-63 resident or consumer of the facility; and

2-1 (C) is not licensed by an agency of the state to
 2-2 perform the services the employee performs at the facility or is
 2-3 ~~and~~
 2-4 [~~(D) is not~~] a nurse aide employed by a [~~nursing~~]
 2-5 facility.

2-6 (3-a) "Executive commissioner" means the executive
 2-7 commissioner of the Health and Human Services Commission.

2-8 SECTION 5. The heading to Section 253.003, Health and
 2-9 Safety Code, is amended to read as follows:

2-10 Sec. 253.003. DETERMINATION; NOTICE; REPORT TO REGISTRY.

2-11 SECTION 6. Subsection (a), Section 253.003, Health and
 2-12 Safety Code, is amended to read as follows:

2-13 (a) If, after an investigation, the department determines
 2-14 that the reportable conduct occurred, the department shall:

2-15 (1) give to the employee written notice of the
 2-16 department's findings that [~~The notice~~] must include:

2-17 (A) [~~(1)~~] a brief summary of the department's
 2-18 findings; and

2-19 (B) [~~(2)~~] a statement of the person's right to a
 2-20 hearing on the occurrence of the reportable conduct; and

2-21 (2) immediately record the reportable conduct in the
 2-22 registry in accordance with Section 253.007 with a notation that
 2-23 the finding is pending a final determination.

2-24 SECTION 7. Section 253.004, Health and Safety Code, is
 2-25 amended by amending Subsection (c) and adding Subsection (d) to
 2-26 read as follows:

2-27 (c) Based on the findings of fact and conclusions of law and
 2-28 the recommendations of the hearings examiner, the commissioner or
 2-29 the commissioner's designee by order may find that the reportable
 2-30 conduct has occurred. If the commissioner or the commissioner's
 2-31 designee finds that the reportable conduct has occurred, the
 2-32 commissioner or the commissioner's designee shall:

2-33 (1) issue an order approving the determination; and

2-34 (2) record the final determination of reportable
 2-35 conduct in the registry under Section 253.007.

2-36 (d) If the commissioner or the commissioner's designee
 2-37 finds that the reportable conduct has not occurred based on the
 2-38 findings of fact and conclusions of law and the recommendations of
 2-39 the hearings examiner, the commissioner or the commissioner's
 2-40 designee shall:

2-41 (1) issue an order rejecting the determination; and

2-42 (2) immediately remove the record of the reportable
 2-43 conduct from the registry maintained under Section 253.007.

2-44 SECTION 8. Subsections (a), (b), and (d), Section 253.005,
 2-45 Health and Safety Code, are amended to read as follows:

2-46 (a) The department shall give notice of the order under
 2-47 Section 253.004(c) [~~253.004~~] to the employee alleged to have
 2-48 committed the reportable conduct. The notice must include:

2-49 (1) separate statements of the findings of fact and
 2-50 conclusions of law;

2-51 (2) a statement of the right of the employee to
 2-52 judicial review of the order; and

2-53 (3) a statement that the final determination of the
 2-54 reportable conduct has been [~~will be~~] recorded in the registry
 2-55 under Section 253.007 and will be retained in the registry if:

2-56 (A) the employee does not request judicial review
 2-57 of the determination; or

2-58 (B) the determination is sustained by the court.

2-59 (b) Not later than the 30th day after the date on which the
 2-60 decision becomes final as provided by Chapter 2001, Government
 2-61 Code, the employee may file a petition for judicial review
 2-62 contesting the finding of the reportable conduct. If the employee
 2-63 does not request judicial review of the determination, the
 2-64 [~~department shall~~] record of the final determination of the
 2-65 reportable conduct shall be retained in the registry under Section
 2-66 253.007.

2-67 (d) If the court sustains the finding of the occurrence of
 2-68 the reportable conduct, the department shall note that the court
 2-69 sustained the final determination of [~~record~~] the reportable

3-1 conduct in the registry under Section 253.007. If the court
3-2 overturns the finding of the occurrence of the reportable conduct,
3-3 the department shall immediately remove the record of the
3-4 reportable conduct from the registry under Section 253.007.

3-5 SECTION 9. Section 253.006, Health and Safety Code, is
3-6 amended to read as follows:

3-7 Sec. 253.006. INFORMAL PROCEEDINGS. The executive
3-8 commissioner [~~department~~] by rule shall adopt procedures governing
3-9 informal proceedings held in compliance with Section 2001.056,
3-10 Government Code.

3-11 SECTION 10. Subsection (a), Section 253.007, Health and
3-12 Safety Code, is amended to read as follows:

3-13 (a) The department shall establish an employee misconduct
3-14 registry. If the department in accordance with this chapter
3-15 finds that an employee of a facility has committed [~~commits~~]
3-16 reportable conduct, the department shall make a record of the
3-17 employee's name, the employee's address, the employee's social
3-18 security number, the name of the facility, the address of the
3-19 facility, the date the reportable conduct occurred, and a
3-20 description of the reportable conduct.

3-21 SECTION 11. Section 253.0075, Health and Safety Code, is
3-22 amended to read as follows:

3-23 Sec. 253.0075. RECORDING REPORTABLE CONDUCT REPORTED BY
3-24 DEPARTMENT OF FAMILY AND PROTECTIVE [~~AND REGULATORY~~] SERVICES. On
3-25 receipt of a finding of an employee's reportable conduct by the
3-26 Department of Family and Protective [~~and Regulatory~~] Services under
3-27 Subchapter I, Chapter 48, Human Resources Code, the department
3-28 shall record the information in the employee misconduct registry in
3-29 accordance with Section 253.007.

3-30 SECTION 12. Section 253.008, Health and Safety Code, is
3-31 amended to read as follows:

3-32 Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL
3-33 SEARCH. (a) Before a facility as defined in this chapter or an
3-34 agency as defined in Section 48.401, Human Resources Code, [~~or a~~
3-35 person exempt from licensing under Section 142.003(a)(19)] may hire
3-36 an employee, the facility or agency [~~person~~] shall search the
3-37 employee misconduct registry under this chapter and the nurse aide
3-38 registry maintained under Chapter 250 as required by the Omnibus
3-39 Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to
3-40 determine whether the applicant for employment is designated in
3-41 either registry as having abused, neglected, or exploited a
3-42 resident or consumer of a facility or agency or an individual
3-43 receiving services from a facility or agency [~~from a person exempt~~
3-44 ~~from licensing under Section 142.003(a)(19)]].~~

3-45 (b) A facility or agency [~~a person exempt from licensing~~
3-46 ~~under Section 142.003(a)(19)] may not employ a person who is listed
3-47 in either registry as having abused, neglected, or exploited a
3-48 resident or consumer of a facility or agency or an individual
3-49 receiving services from a facility or agency. This subsection does
3-50 not prohibit a facility or agency from employing or continuing to
3-51 employ a person whose only record of reportable conduct included in
3-52 the registry is pending a final determination [~~from a person exempt~~
3-53 ~~from licensing under Section 142.003(a)(19)]].~~~~

3-54 (c) In addition to the initial verification of
3-55 employability, a facility or agency shall annually search the
3-56 employee misconduct registry and the nurse aide registry maintained
3-57 under Chapter 250 to determine whether any employee of the facility
3-58 or agency is designated in either registry as having abused,
3-59 neglected, or exploited a resident or consumer of a facility or
3-60 agency or an individual receiving services from a facility or
3-61 agency.

3-62 SECTION 13. Section 253.009, Health and Safety Code, is
3-63 amended to read as follows:

3-64 Sec. 253.009. NOTIFICATION. (a) Each facility as defined
3-65 in this chapter and each agency as defined in Section 48.401, Human
3-66 Resources Code, [~~and each person exempt from licensing under~~
3-67 Section 142.003(a)(19)] shall notify its employees in a manner
3-68 prescribed by the Department of Aging and Disability Services
3-69 [~~department~~]:

4-1 (1) about the employee misconduct registry; ~~and~~
4-2 (2) that an employee may not be employed if the
4-3 employee is listed in the registry after a final determination; and
4-4 (3) that a facility or agency is not prohibited from
4-5 employing an employee listed in the registry pending a final
4-6 determination.

4-7 (b) The executive commissioner ~~[department]~~ shall adopt
4-8 rules to implement this section.

4-9 SECTION 14. Section 48.401, Human Resources Code, is
4-10 amended to read as follows:

4-11 Sec. 48.401. DEFINITIONS. In this subchapter:

4-12 (1) "Agency" means:

4-13 (A) an entity licensed under Chapter 142, Health
4-14 and Safety Code; ~~or~~

4-15 (B) a person exempt from licensing under Section
4-16 142.003(a)(19), Health and Safety Code; or

4-17 (C) an entity investigated by the department
4-18 under Subchapter F or under Section 261.404, Family Code.

4-19 (2) "Commissioner" means the commissioner of the
4-20 Department of Family and Protective Services.

4-21 (3) "Employee" means a person who:

4-22 (A) works for an agency;

4-23 (B) provides personal care services, active
4-24 treatment, or any other personal services to an individual
4-25 receiving agency services or to an individual who is a child for
4-26 whom an investigation is authorized under Section 261.404, Family
4-27 Code; and

4-28 (C) is not licensed by the state to perform the
4-29 services the person performs for the agency.

4-30 (4) ~~(3)~~ "Employee misconduct registry" means the
4-31 employee misconduct registry established under Chapter 253, Health
4-32 and Safety Code.

4-33 ~~[(4) "Executive director" means the executive
4-34 director of the Department of Protective and Regulatory Services.]~~

4-35 (5) "Reportable conduct" includes:

4-36 (A) abuse or neglect that causes or may cause
4-37 death or harm to an individual receiving agency services;

4-38 (B) sexual abuse of an individual receiving
4-39 agency services;

4-40 (C) financial exploitation of an individual
4-41 receiving agency services in an amount of \$25 or more; and

4-42 (D) emotional, verbal, or psychological abuse
4-43 that causes harm to an individual receiving agency services.

4-44 SECTION 15. Section 48.403, Human Resources Code, is
4-45 amended to read as follows:

4-46 Sec. 48.403. FINDING. After an investigation and following
4-47 the procedures of this subchapter, if the department confirms or
4-48 validates the occurrence of reportable conduct by an employee, the
4-49 department shall immediately forward the finding to the ~~[Texas]~~
4-50 Department of Aging and Disability ~~[Human]~~ Services to record the
4-51 reportable conduct in the employee misconduct registry under
4-52 Section 253.007, Health and Safety Code.

4-53 SECTION 16. Subsection (c), Section 48.404, Human Resources
4-54 Code, is amended to read as follows:

4-55 (c) If the employee notified of the violation accepts the
4-56 finding of the department or fails to timely respond to the notice,
4-57 the commissioner ~~[executive director]~~ or the commissioner's
4-58 ~~[executive director's]~~ designee shall issue an order approving the
4-59 finding and ordering that the department's findings be forwarded to
4-60 the ~~[Texas]~~ Department of Aging and Disability ~~[Human]~~ Services to
4-61 be recorded in the employee misconduct registry under Section
4-62 253.007, Health and Safety Code.

4-63 SECTION 17. Subsections (b) and (c), Section 48.405, Human
4-64 Resources Code, are amended to read as follows:

4-65 (b) The hearings examiner shall make findings of fact and
4-66 conclusions of law and shall promptly issue to the commissioner
4-67 ~~[executive director]~~ or the commissioner's ~~[executive director's]~~
4-68 designee a proposal for decision as to the occurrence of the
4-69 reportable conduct.

5-1 (c) Based on the findings of fact and conclusions of law and
 5-2 the recommendations of the hearings examiner, the commissioner
 5-3 [~~executive director~~] or the commissioner's [~~executive director's~~]
 5-4 designee by order may find that the reportable conduct has
 5-5 occurred. If the commissioner [~~executive director~~] or the
 5-6 commissioner's [~~executive director's~~] designee finds that
 5-7 reportable conduct has occurred, the commissioner [~~executive~~
 5-8 ~~director~~] or the commissioner's [~~executive director's~~] designee
 5-9 shall issue an order approving the finding.

5-10 SECTION 18. Subsections (b) and (d), Section 48.406, Human
 5-11 Resources Code, are amended to read as follows:

5-12 (b) Not later than the 30th day after the date the decision
 5-13 becomes final as provided by Chapter 2001, Government Code, the
 5-14 employee may file a petition for judicial review contesting the
 5-15 finding of the reportable conduct. If the employee does not request
 5-16 judicial review of the finding, the department shall send a record
 5-17 of the department's findings to the [~~Texas~~] Department of Aging and
 5-18 Disability [~~Human~~] Services to record in the employee misconduct
 5-19 registry under Section 253.007, Health and Safety Code.

5-20 (d) If the court sustains the finding of the occurrence of
 5-21 the reportable conduct, the department shall forward the finding of
 5-22 reportable conduct to the [~~Texas~~] Department of Aging and
 5-23 Disability [~~Human~~] Services to record the reportable conduct in the
 5-24 employee misconduct registry under Section 253.007, Health and
 5-25 Safety Code.

5-26 SECTION 19. Section 48.407, Human Resources Code, is
 5-27 amended to read as follows:

5-28 Sec. 48.407. INFORMAL PROCEEDINGS. The executive
 5-29 commissioner [~~department~~] by rule shall adopt procedures governing
 5-30 informal proceedings held in compliance with Section 2001.056,
 5-31 Government Code.

5-32 SECTION 20. Section 48.408, Human Resources Code, is
 5-33 amended to read as follows:

5-34 Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT
 5-35 REGISTRY. (a) When the department forwards a finding of
 5-36 reportable conduct to the [~~Texas~~] Department of Aging and
 5-37 Disability [~~Human~~] Services for recording in the employee
 5-38 misconduct registry, the department shall provide the employee's
 5-39 name, the employee's address, the employee's social security
 5-40 number, if available, the name of the agency, the address of the
 5-41 agency, the date the reportable conduct occurred, and a description
 5-42 of the reportable conduct.

5-43 (b) If a governmental agency of another state or the federal
 5-44 government finds that an employee has committed an act that
 5-45 constitutes reportable conduct, the department may send to the
 5-46 [~~Texas~~] Department of Aging and Disability [~~Human~~] Services, for
 5-47 recording in the employee misconduct registry, the employee's name,
 5-48 the employee's address, the employee's social security number, if
 5-49 available, the name of the agency, the address of the agency, the
 5-50 date of the act, and a description of the act.

5-51 SECTION 21. Not later than September 1, 2010, the executive
 5-52 commissioner of the Health and Human Services Commission shall
 5-53 adopt the rules necessary to implement the changes in law made by
 5-54 this Act. The changes in law made by this Act apply only to
 5-55 reportable conduct that occurs on or after September 1, 2010.
 5-56 Reportable conduct that occurs before that date is governed by the
 5-57 law in effect immediately before the effective date of this Act, and
 5-58 that law is continued in effect for that purpose.

5-59 SECTION 22. This Act takes effect immediately if it
 5-60 receives a vote of two-thirds of all the members elected to each
 5-61 house, as provided by Section 39, Article III, Texas Constitution.
 5-62 If this Act does not receive the vote necessary for immediate
 5-63 effect, this Act takes effect September 1, 2009.

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