

AN ACT

relating to certain employee misconduct registries and to the imposition of a disciplinary action on a licensed nursing facility administrator; providing a penalty.

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

SECTION 1. Section 242.002, Health and Safety Code, is amended by amending Subdivision (4) and adding Subdivision (5-a) to read as follows:

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

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

SECTION 2. Subsections (a), (c), (d), and (e), Section 242.313, Health and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84), Acts of the 75th Legislature, Regular Session, 1997, are amended to read as follows:

(a) The department may revoke, suspend, or refuse to renew a nursing facility administrator's license, assess an administrative penalty, issue a written reprimand, require participation in continuing education, or place an administrator on probation, after due notice and the opportunity for a hearing, on proof of any of the following grounds:

(1) the license holder has wilfully or repeatedly violated a provision of this subchapter or a rule adopted under this

1 subchapter;

2 (2) the license holder has wilfully or repeatedly  
3 acted in a manner inconsistent with the health and safety of the  
4 residents of a facility of which the license holder is an  
5 administrator;

6 (3) the license holder obtained or attempted to obtain  
7 a license through misrepresentation or deceit or by making a  
8 material misstatement of fact on a license application;

9 (4) the license holder's use of alcohol or drugs  
10 creates a hazard to the residents of a facility;

11 (5) a judgment of a court of competent jurisdiction  
12 finds that the license holder is mentally incapacitated;

13 (6) the license holder has been convicted in a court of  
14 competent jurisdiction of a misdemeanor or felony involving moral  
15 turpitude; ~~or~~

16 (7) the license holder has been convicted in a court of  
17 competent jurisdiction of an offense listed in Section 250.006; or

18 (8) the the license holder has been negligent or  
19 incompetent in the license holder's duties as a nursing facility  
20 administrator.

21 (c) A license holder is entitled to a hearing in accordance  
22 with rules adopted ~~[promulgated]~~ by the executive commissioner  
23 ~~[board]~~ before a sanction is imposed under this section.

24 (d) The executive commissioner ~~[board]~~ by rule shall adopt a  
25 broad schedule of sanctions for violations under this subchapter.  
26 The department shall use the schedule for any sanction imposed ~~as~~  
27 ~~the result of a hearing conducted~~ in accordance with the rules.

1           (e) The executive commissioner [~~department~~] shall by rule  
2 establish criteria to determine whether deficiencies from a  
3 facility's survey warrant action against an administrator. The  
4 criteria shall include a determination of whether the survey  
5 indicates substandard quality of care related to an act or failure  
6 to act by the administrator, and whether a deficiency is related to  
7 an act or failure to act by the administrator. If a deficiency on  
8 which a disciplinary action against an administrator is initiated  
9 or completed is not substantiated, the disciplinary action shall be  
10 reversed.

11           SECTION 3. Subsections (c) and (d), Section 242.316, Health  
12 and Safety Code, as added by Section 1.01, Chapter 1280 (S.B. 84),  
13 Acts of the 75th Legislature, Regular Session, 1997, are amended to  
14 read as follows:

15           (c) If the person accepts the determination and the penalty  
16 recommended by the department, or if the person fails to timely  
17 respond to the notice, the department shall impose the recommended  
18 penalty.

19           (d) If the person requests a hearing [~~or fails to respond~~  
20 ~~timely to the notice~~], the department shall set a hearing and give  
21 notice of the hearing to the person. The hearing shall be held in  
22 accordance with the [~~department's~~] rules on contested case hearings  
23 adopted by the executive commissioner.

24           SECTION 4. Subsections (a) and (d), Section 242.318, Health  
25 and Safety Code, as added by Section 2.01, Chapter 1280 (S.B. 84),  
26 Acts of the 75th Legislature, Regular Session, 1997, are amended to  
27 read as follows:

1 (a) The board may revoke, suspend, or refuse to renew a  
2 nursing facility administrator's license, assess an administrative  
3 penalty, issue a written reprimand, require participation in  
4 continuing education, or place an administrator on probation, after  
5 due notice and the opportunity for a hearing, on proof of any of the  
6 following grounds:

7 (1) the license holder has wilfully or repeatedly  
8 violated a provision of this subchapter or a rule adopted under this  
9 subchapter;

10 (2) the license holder has wilfully or repeatedly  
11 acted in a manner inconsistent with the health and safety of the  
12 residents of a facility of which the license holder is an  
13 administrator;

14 (3) the license holder obtained or attempted to obtain  
15 a license through misrepresentation or deceit or by making a  
16 material misstatement of fact on a license application;

17 (4) the license holder's use of alcohol or drugs  
18 creates a hazard to the residents of a facility;

19 (5) a judgment of a court of competent jurisdiction  
20 finds that the license holder is mentally incapacitated;

21 (6) the license holder has been convicted in a court of  
22 competent jurisdiction of a misdemeanor or felony involving moral  
23 turpitude; [~~or~~]

24 (7) the license holder has been convicted in a court of  
25 competent jurisdiction of an offense listed in Section 250.006; or

26 (8) the the license holder has been negligent or  
27 incompetent in the license holder's duties as a nursing facility

1 administrator.

2 (d) The board by rule shall adopt a broad schedule of  
3 sanctions for violations under this subchapter. The board shall  
4 use the schedule for any sanction imposed [~~as the result of a~~  
5 ~~hearing conducted~~] in accordance with the rules.

6 SECTION 5. Subsections (c) and (d), Section 242.321, Health  
7 and Safety Code, as added by Section 2.01, Chapter 1280 (S.B. 84),  
8 Acts of the 75th Legislature, Regular Session, 1997, are amended to  
9 read as follows:

10 (c) If the person accepts the determination and the penalty  
11 recommended by the department, or if the person fails to timely  
12 respond to the notice, the department shall impose the recommended  
13 penalty.

14 (d) If the person requests a hearing [~~or fails to respond~~  
15 ~~timely to the notice~~], the department shall set a hearing and give  
16 notice of the hearing to the person. The hearing shall be held in  
17 accordance with the [~~department's~~] rules on contested case hearings  
18 adopted by the executive commissioner.

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

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

23 SECTION 7. Section 250.003, Health and Safety Code, is  
24 amended by amending Subsection (a) and adding Subsections (a-1) and  
25 (d) to read as follows:

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

27 (1) [~~a person~~] if the facility determines, as a result

1 of a criminal history check, that the applicant [~~a person~~] has been  
2 convicted of an offense listed in this chapter that bars employment  
3 or that a conviction is a contraindication to employment with the  
4 consumers the facility serves;

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

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

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

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

20 (1) annually search the nurse aide registry maintained  
21 under this chapter and the employee misconduct registry maintained  
22 under Section 253.007 to determine whether any employee of the  
23 facility is designated in either registry as having abused,  
24 neglected, or exploited a resident or consumer of a facility or an  
25 individual receiving services from a facility; and

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

1 SECTION 8. Section 253.001, Health and Safety Code, is  
2 amended by amending Subdivisions (1), (2), and (3) and adding  
3 Subdivision (3-a) to read as follows:

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

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

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

9 (A) works at a facility;

10 (B) is an individual who provides personal care  
11 services, active treatment, or any other personal services to a  
12 resident or consumer of the facility; and

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

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

18 (3-a) "Executive commissioner" means the executive  
19 commissioner of the Health and Human Services Commission.

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

22 Sec. 253.0055. REMOVAL OF NURSE AIDE FINDING. If a finding  
23 of reportable conduct is the basis for an entry in the nurse aide  
24 registry maintained under Chapter 250 and the entry is subsequently  
25 removed from the nurse aide registry, the commissioner or the  
26 commissioner's designee shall immediately remove the record of  
27 reportable conduct from the employee misconduct registry

1 maintained under Section 253.007.

2 SECTION 10. Section 253.006, Health and Safety Code, is  
3 amended to read as follows:

4 Sec. 253.006. INFORMAL PROCEEDINGS. The executive  
5 commissioner [~~department~~] by rule shall adopt procedures governing  
6 informal proceedings held in compliance with Section 2001.056,  
7 Government Code.

8 SECTION 11. Subsection (a), Section 253.007, Health and  
9 Safety Code, is amended to read as follows:

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

18 SECTION 12. Section 253.0075, Health and Safety Code, is  
19 amended to read as follows:

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

27 SECTION 13. Section 253.008, Health and Safety Code, is



1 amended to read as follows:

2           Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL  
3 SEARCH. (a) Before a facility as defined in this chapter or an  
4 agency as defined in Section 48.401, Human Resources Code, [~~or a~~  
5 ~~person exempt from licensing under Section 142.003(a)(19)]~~ may hire  
6 an employee, the facility or agency [~~person~~] shall search the  
7 employee misconduct registry under this chapter and the nurse aide  
8 registry maintained under Chapter 250 as required by the Omnibus  
9 Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to  
10 determine whether the applicant for employment is designated in  
11 either registry as having abused, neglected, or exploited a  
12 resident or consumer of a facility or agency or an individual  
13 receiving services from a facility or agency [~~from a person exempt~~  
14 ~~from licensing under Section 142.003(a)(19)]~~.

15           (b) A facility or agency [~~a person exempt from licensing~~  
16 ~~under Section 142.003(a)(19)]~~ may not employ a person who is listed  
17 in either registry as having abused, neglected, or exploited a  
18 resident or consumer of a facility or agency or an individual  
19 receiving services from a facility or agency [~~from a person exempt~~  
20 ~~from licensing under Section 142.003(a)(19)]~~.

21           (c) In addition to the initial verification of  
22 employability, a facility or agency shall:

23                 (1) annually search the employee misconduct registry  
24 and the nurse aide registry maintained under Chapter 250 to  
25 determine whether any employee of the facility or agency is  
26 designated in either registry as having abused, neglected, or  
27 exploited a resident or consumer of a facility or agency or an

1 individual receiving services from a facility or agency; and

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

4 SECTION 14. Section 253.009, Health and Safety Code, is  
5 amended to read as follows:

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

12 (1) about the employee misconduct registry; and

13 (2) that an employee may not be employed if the  
14 employee is listed in the registry.

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

17 SECTION 15. Section 48.401, Human Resources Code, is  
18 amended to read as follows:

19 Sec. 48.401. DEFINITIONS. In this subchapter:

20 (1) "Agency" means:

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

23 (B) a person exempt from licensing under Section  
24 142.003(a)(19), Health and Safety Code; or

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

27 (2) "Commissioner" means the commissioner of the

1 Department of Family and Protective Services.

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

3                   (A) works for an agency;

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

8 Code; and

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

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

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

16           (5) "Reportable conduct" includes:

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

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

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

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

25           SECTION 16. Section 48.403, Human Resources Code, is  
26 amended to read as follows:

27           Sec. 48.403. FINDING. After an investigation and following

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

7 SECTION 17. Subsection (c), Section 48.404, Human Resources  
8 Code, is amended to read as follows:

9 (c) If the employee notified of the violation accepts the  
10 finding of the department or fails to timely respond to the notice,  
11 the commissioner [~~executive director~~] or the commissioner's  
12 [~~executive director's~~] designee shall issue an order approving the  
13 finding and ordering that the department's findings be forwarded to  
14 the [~~Texas~~] Department of Aging and Disability [~~Human~~] Services to  
15 be recorded in the employee misconduct registry under Section  
16 253.007, Health and Safety Code.

17 SECTION 18. Section 48.405, Human Resources Code, is  
18 amended to read as follows:

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

- 21 (1) set a hearing;
- 22 (2) give written notice of the hearing to the  
23 employee; and
- 24 (3) designate a hearings examiner to conduct the  
25 hearing.

26 (b) The hearings examiner shall make findings of fact and  
27 conclusions of law and shall promptly issue to the commissioner

1 ~~[executive director]~~ or the commissioner's ~~[executive director's]~~  
2 designee a proposal for decision as to the occurrence of the  
3 reportable conduct.

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

13 SECTION 19. Subsections (b) and (d), Section 48.406, Human  
14 Resources Code, are amended to read as follows:

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

23 (d) If the court sustains the finding of the occurrence of  
24 the reportable conduct, the department shall forward the finding of  
25 reportable conduct to the ~~[Texas]~~ Department of Aging and  
26 Disability ~~[Human]~~ Services to record the reportable conduct in the  
27 employee misconduct registry under Section 253.007, Health and

1 Safety Code.

2 SECTION 20. Section 48.407, Human Resources Code, is  
3 amended to read as follows:

4 Sec. 48.407. INFORMAL PROCEEDINGS. The executive  
5 commissioner [~~department~~] by rule shall adopt procedures governing  
6 informal proceedings held in compliance with Section 2001.056,  
7 Government Code.

8 SECTION 21. Section 48.408, Human Resources Code, is  
9 amended to read as follows:

10 Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT  
11 REGISTRY. (a) When the department forwards a finding of  
12 reportable conduct to the [~~Texas~~] Department of Aging and  
13 Disability [~~Human~~] Services for recording in the employee  
14 misconduct registry, the department shall provide the employee's  
15 name, the employee's address, the employee's social security  
16 number, if available, the name of the agency, the address of the  
17 agency, the date the reportable conduct occurred, and a description  
18 of the reportable conduct.

19 (b) If a governmental agency of another state or the federal  
20 government finds that an employee has committed an act that  
21 constitutes reportable conduct, the department may send to the  
22 [~~Texas~~] Department of Aging and Disability [~~Human~~] Services, for  
23 recording in the employee misconduct registry, the employee's name,  
24 the employee's address, the employee's social security number, if  
25 available, the name of the agency, the address of the agency, the  
26 date of the act, and a description of the act.

27 SECTION 22. The change in law made by Sections 1 through 5

1 of this Act applies only to a disciplinary action imposed on or  
2 after the effective date of this Act. A disciplinary action imposed  
3 before that date is governed by the law in effect at the time the  
4 action was initiated, and the former law is continued in effect for  
5 that purpose.

6 SECTION 23. Not later than September 1, 2010, the executive  
7 commissioner of the Health and Human Services Commission shall  
8 adopt the rules necessary to implement the changes in law made by  
9 this Act related to the employee misconduct registry, the nurse  
10 aide registry, and records contained in those registries. The  
11 changes in law made by this Act apply only to reportable conduct  
12 that occurs on or after September 1, 2010. Reportable conduct that  
13 occurs before that date is governed by the law in effect immediately  
14 before the effective date of this Act, and that law is continued in  
15 effect for that purpose.

16 SECTION 24. This Act takes effect immediately if it  
17 receives a vote of two-thirds of all the members elected to each  
18 house, as provided by Section 39, Article III, Texas Constitution.  
19 If this Act does not receive the vote necessary for immediate  
20 effect, this Act takes effect September 1, 2009.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 806 passed the Senate on April 2, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 29, 2009, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 806 passed the House, with amendment, on May 27, 2009, by the following vote: Yeas 148, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor