

SENATE AMENDMENTS

2nd Printing

By: Guillen, Moody, Riddle, Leibowitz,
Marquez

H.B. No. 2328

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the punishment for certain fraud offenses committed
3 against elderly individuals.

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

5 SECTION 1. Section 32.21, Penal Code, is amended by
6 amending Subsection (c) and adding Subsection (e-1) to read as
7 follows:

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

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

14 SECTION 2. Section 32.31(d), Penal Code, is amended to read
15 as follows:

16 (d) An offense under this section is a state jail felony,
17 except that the offense is a felony of the third degree if it is
18 shown on the trial of the offense that the offense was committed
19 against an elderly individual as defined by Section 22.04.

20 SECTION 3. Section 32.51, Penal Code, is amended by adding
21 Subsection (c-1) to read as follows:

22 (c-1) An offense described for purposes of punishment by
23 Subsections (c)(1)-(3) is increased to the next higher category of
24 offense if it is shown on the trial of the offense that the offense

1 was committed against an elderly individual as defined by Section
2 22.04.

3 SECTION 4. The change in law made by this Act applies only
4 to an offense committed on or after the effective date of this Act.
5 An offense committed before the effective date of this Act is
6 governed by the law in effect when the offense was committed, and
7 the former law is continued in effect for that purpose. For the
8 purposes of this section, an offense was committed before the
9 effective date of this Act if any element of the offense occurred
10 before that date.

11 SECTION 5. This Act takes effect September 1, 2009.

ADOPTED

MAY 26 2009

Atty Gen
Secretary of the Senate

By: Guillen et al. / Carona

H.B. No. 2328

Substitute the following for H.B. No. 2328:

By: *John Stutman*

C.S. H.B. No. 2328

A BILL TO BE ENTITLED

1

AN ACT

2 relating to regulating employment at or by certain facilities
3 serving the elderly or persons with disabilities and to certain
4 acts committed against those individuals.

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

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

8 (a) A person for whom the facility is entitled to obtain
9 criminal history record information may not be employed in a
10 facility if the person has been convicted of an offense listed in
11 this subsection:

12 (1) an offense under Chapter 19, Penal Code (criminal
13 homicide);

14 (2) an offense under Chapter 20, Penal Code
15 (kidnapping and unlawful restraint);

16 (3) an offense under Section 21.02, Penal Code
17 (continuous sexual abuse of young child or children), or Section
18 21.11, Penal Code (indecent with a child);

19 (4) an offense under Section 22.011, Penal Code
20 (sexual assault);

21 (5) an offense under Section 22.02, Penal Code
22 (aggravated assault);

23 (6) an offense under Section 22.04, Penal Code (injury
24 to a child, elderly individual, or disabled individual);

- 1 (7) an offense under Section 22.041, Penal Code
- 2 (abandoning or endangering child);
- 3 (8) an offense under Section 22.08, Penal Code (aiding
- 4 suicide);
- 5 (9) an offense under Section 25.031, Penal Code
- 6 (agreement to abduct from custody);
- 7 (10) an offense under Section 25.08, Penal Code (sale
- 8 or purchase of a child);
- 9 (11) an offense under Section 28.02, Penal Code
- 10 (arson);
- 11 (12) an offense under Section 29.02, Penal Code
- 12 (robbery);
- 13 (13) an offense under Section 29.03, Penal Code
- 14 (aggravated robbery);
- 15 (14) an offense under Section 21.08, Penal Code
- 16 (indecent exposure);
- 17 (15) an offense under Section 21.12, Penal Code
- 18 (improper relationship between educator and student);
- 19 (16) an offense under Section 21.15, Penal Code
- 20 (improper photography or visual recording);
- 21 (17) an offense under Section 22.05, Penal Code
- 22 (deadly conduct);
- 23 (18) an offense under Section 22.021, Penal Code
- 24 (aggravated sexual assault);
- 25 (19) an offense under Section 22.07, Penal Code
- 26 (terroristic threat);
- 27 (20) an offense under Section 33.021, Penal Code

1 (online solicitation of a minor);

2 (21) an offense under Section 34.02, Penal Code (money
3 laundering);

4 (22) an offense under Section 35A.02, Penal Code
5 (Medicaid fraud);

6 (23) an offense under Section 36.06, Penal Code
7 (obstruction or retaliation);

8 (24) an offense under Section 42.09, Penal Code
9 (cruelty to animals); or

10 (25) [~~24~~] a conviction under the laws of another
11 state, federal law, or the Uniform Code of Military Justice for an
12 offense containing elements that are substantially similar to the
13 elements of an offense listed by this subsection.

14 SECTION 2. The heading to Chapter 253, Health and Safety
15 Code, is amended to read as follows:

16 CHAPTER 253. CERTAIN EMPLOYEE MISCONDUCT; REGISTRY

17 SECTION 3. Section 253.001(5), Health and Safety Code, is
18 amended to read as follows:

19 (5) "Reportable conduct" includes:

20 (A) abuse or neglect that causes or may cause
21 death or harm to a resident or consumer of a facility;

22 (B) sexual abuse of a resident or consumer of a
23 facility;

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

26 (D) emotional, verbal, or psychological abuse
27 that causes harm to a resident or consumer of a facility; and

1 (E) solicitation of a gift from a resident or
2 consumer of a facility.

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

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

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

12 SECTION 5. Section 32.31(d), Penal Code, is amended to read
13 as follows:

14 (d) An offense under this section is a state jail felony and
15 except that the offense is a felony of the third degree if it is
16 shown on the trial of the offense that the offense was committed
17 against an elderly individual as defined by Section 22.04.

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

20 (c-1) An offense described for purposes of punishment by
21 Subsections (c)(1)-(3) is increased to the next higher category of
22 offense if it is shown on the trial of the offense that the offense
23 was committed against an elderly individual as defined by Section
24 22.04.

25 SECTION 7. The change in law made by this Act in amending
26 Sections 32.21, 32.31, and 32.51, Penal Code, applies only to an
27 offense committed on or after the effective date of this Act. An

1 offense committed before the effective date of this Act is governed
2 by the law in effect when the offense was committed, and the former
3 law is continued in effect for that purpose. For the purposes of
4 this section, an offense was committed before the effective date of
5 this Act if any element of the offense occurred before that date.

6 SECTION 8. This Act takes effect September 1, 2009.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 27, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2328 by Guillen (Relating to regulating employment at or by certain facilities serving the elderly or persons with disabilities and to certain acts committed against those individuals.),
As Passed 2nd House

No significant fiscal implication to the State is anticipated.

The bill would amend the Health and Safety Code to include obstruction or retaliation to the list of offenses for which a facility regulated under Chapter 250 may bar employment. The bill would amend the heading of Chapter 253, Health and Safety Code, to read "Certain Employee Misconduct; Registry." The bill would add solicitation of a gift from a resident or consumer of a facility to the list of reportable conducts for an employee of a facility regulated by Chapter 253, Health and Safety Code. The bill would also amend the Penal Code to allow the penalty for certain fraud offenses to be increased to that of the next higher category if it is shown at trial the offense was committed against an elderly individual as defined by Section 22.04, Penal Code (age 65 or older).

The bill would take effect on September 1, 2009.

It is assumed the provisions of the bill relating to the Health and Safety Code would not result in a significant fiscal impact. For this analysis it is also assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, SD, ESi, GG, TMP, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 20, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2328 by Guillen (Relating to regulating employment at or by certain facilities serving the elderly or persons with disabilities and to certain acts committed against those individuals.),
Committee Report 2nd House, Substituted

No significant fiscal implication to the State is anticipated.

The bill would amend the Health and Safety Code to include obstruction or retaliation to the list of offenses for which a facility regulated under Chapter 250 may bar employment. The bill would amend the heading of Chapter 253, Health and Safety Code, to read "Certain Employee Misconduct; Registry." The bill would add solicitation of a gift from a resident or consumer of a facility to the list of reportable conducts for an employee of a facility regulated by Chapter 253, Health and Safety Code. The bill would also amend the Penal Code to allow the penalty for certain fraud offenses to be increased to that of the next higher category if it is shown at trial the offense was committed against an elderly individual as defined by Section 22.04, Penal Code (age 65 or older).

The bill would take effect on September 1, 2009.

It is assumed the provisions of the bill relating to the Health and Safety Code would not result in a significant fiscal impact. For this analysis it is also assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, TMP, LM

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 15, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2328 by Guillen (Relating to the punishment for certain fraud offenses committed against elderly individuals.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code to allow the penalty for certain fraud offenses to be increased to that of the next higher category if it is shown at trial the offense was committed against an elderly individual as defined by Section 22.04, Penal Code (age 65 or older).

The bill would take effect on September 1, 2009 and apply to offenses committed on or after that date.

For this analysis it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 21, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2328 by Guillen (Relating to the punishment for certain fraud offenses committed against elderly individuals.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code to allow the penalty for certain fraud offenses to be increased to that of the next higher category if it is shown at trial the offense was committed against an elderly individual as defined by Section 22.04, Penal Code (age 65 or older).

The bill would take effect on September 1, 2009 and apply to offenses committed on or after that date.

For this analysis it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, LM

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 20, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2328 by Guillen (Relating to regulating employment at or by certain facilities serving the elderly or persons with disabilities and to certain acts committed against those individuals.),
Committee Report 2nd House, Substituted

The provisions of the bill that are the subject of this analysis are the provisions that authorize or require a change in the sanctions applicable to adults convicted of felony crime. This bill would amend the Penal Code to allow the penalty for certain fraud offenses to be increased to the next higher category if it is shown at trial the offense was committed against an elderly individual as defined by Section 22.04, Penal Code (age 65 or older). Fraud is currently punishable at all offense levels depending upon the value of the item or service being procured.

A Class A Misdemeanor is punishable by confinement in a county jail for any term of not more than one year, or, in addition to confinement, a fine not to exceed \$4,000.

A state jail felony is punishable by confinement in a state jail for any term of not more than two years or less than 180 days, or, in addition to confinement, a fine not to exceed \$10,000.

A felony of the third degree is punishable by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

A felony of the second degree is punishable by imprisonment in the institutional division for any term of not more than 20 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

A felony of the first degree is punishable by imprisonment in the institutional division for any term of not more than 99 years or less than 5 years, or, in addition to confinement, a fine not to exceed \$10,000.

The provisions of the bill would allow the punishment for certain fraud offenses to be enhanced if it is shown at the trial the offense was committed against someone who is 65 or older. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses. For this analysis it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Source Agencies:

LBB Staff: JOB, GG, TMP, LM

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LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 15, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2328 by Guillen (Relating to the punishment for certain fraud offenses committed against elderly individuals.), **As Engrossed**

This bill would amend the Penal Code to allow the penalty for certain fraud offenses to be increased to the next higher category if it is shown at trial the offense was committed against an elderly individual as defined by Section 22.04, Penal Code (age 65 or older). Fraud is currently punishable at all offense levels depending upon the value of the item or service being procured.

A Class A Misdemeanor is punishable by confinement in a county jail for any term of not more than one year, or, in addition to confinement, a fine not to exceed \$4,000.

A state jail felony is punishable by confinement in a state jail for any term of not more than two years or less than 180 days, or, in addition to confinement, a fine not to exceed \$10,000.

A felony of the third degree is punishable by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

A felony of the second degree is punishable by imprisonment in the institutional division for any term of not more than 20 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

A felony of the first degree is punishable by imprisonment in the institutional division for any term of not more than 99 years or less than 5 years, or, in addition to confinement, a fine not to exceed \$10,000.

The provisions of the bill would allow the punishment for certain fraud offenses to be enhanced if it is shown at the trial the offense was committed against someone who is 65 or older. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses. For this analysis it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Source Agencies:

LBB Staff: JOB, GG, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

March 20, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2328 by Guillen (Relating to the punishment for certain fraud offenses committed against elderly individuals.), **As Introduced**

This bill would amend the Penal Code to allow the penalty for certain fraud offenses to be increased to the next higher category if it is shown at trial the offense was committed against an elderly individual as defined by Section 22.04, Penal Code (age 65 or older). Fraud is currently punishable at all offense levels depending upon the value of the item or service being procured.

A Class A Misdemeanor is punishable by confinement in a county jail for any term of not more than one year, or, in addition to confinement, a fine not to exceed \$4,000.

A state jail felony is punishable by confinement in a state jail for any term of not more than two years or less than 180 days, or, in addition to confinement, a fine not to exceed \$10,000.

A felony of the third degree is punishable by imprisonment in the institutional division for any term of not more than 10 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

A felony of the second degree is punishable by imprisonment in the institutional division for any term of not more than 20 years or less than 2 years, or, in addition to confinement, a fine not to exceed \$10,000.

A felony of the first degree is punishable by imprisonment in the institutional division for any term of not more than 99 years or less than 5 years, or, in addition to confinement, a fine not to exceed \$10,000.

The provisions of the bill would allow the punishment for certain fraud offenses to be enhanced if it is shown at the trial the offense was committed against someone who is 65 or older. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses. For this analysis it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies.

Source Agencies:

LBB Staff: JOB, GG, LM