

## **BILL ANALYSIS**

C.S.S.B. 78  
By: Nelson  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Observers note that a state agency has limited authority to take action against an applicant for a license based on an adverse action from another agency, and these observers assert that this endangers the health and safety of the public if individuals who have been disciplined for violations of license requirements by one agency are subsequently licensed to provide services by another agency. C.S.S.B. 78 seeks to address this issue by establishing provisions relating to adverse licensing, listing, or registration decisions by certain health and human services agencies.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1 and 2 of this bill.

### **ANALYSIS**

C.S.S.B. 78 amends the Government Code to establish that the bill's provisions apply only to final adverse licensing, listing, or registration decisions of a health and human services agency with respect to a person under the law authorizing the agency to regulate the following types of persons: a youth camp; a home and community support services agency; a hospital; a convalescent home, nursing home, or related institution; an assisted living facility; a special care facility; an intermediate care facility for the mentally retarded; a chemical dependency treatment facility; a mental hospital or mental health facility; a child-care facility, child-placing agency, or family home; or an adult day-care facility. The bill makes its provisions inapplicable to an agency decision that did not result in a final order or that was reversed on appeal.

C.S.S.B. 78 requires each health and human services agency that regulates such a person, in accordance with the bill's provisions and rules of the executive commissioner of the Health and Human Services Commission, to maintain a record of each application for a license, including a renewal license or license that does not expire, a listing, or a registration that is denied by the agency under the law authorizing the agency to regulate the person until the 10th anniversary of the date the application is denied and to maintain a record of each license, listing, or registration that is revoked, suspended, or terminated by the agency under the applicable law until the 10th anniversary of the date of the revocation, suspension, or termination. The bill requires such records to include certain specified information relating to the persons and type of license, listing, or registration involved in the adverse decision; a summary of the terms of the denial, revocation, suspension, or termination; and the period the denial, revocation, suspension, or termination was effective. The bill requires each health and human services agency that regulates a person described by the bill's provisions to each month provide a copy of the records maintained by the agency regarding adverse licensing, listing, or registration decisions to each other health and human services agency that regulates an applicable person.

C.S.S.B. 78 authorizes a health and human services agency that regulates an applicable person to deny an application for a license, including a renewal license or a license that does not expire, a

listing, or a registration if the applicant, a person listed on the application, or a person determined by the applicable regulating agency to be a controlling person of an entity for which the license, listing, or registration is sought is listed in a record maintained under the bill's provisions and if the agency's action that resulted in the person being listed in a record is based on an act or omission that resulted in physical or mental harm to an individual in the care of the applicant or person; a threat to the health, safety, or well-being of an individual in the care of the applicant or person; the physical, mental, or financial exploitation of an individual in the care of the applicant or person; or a determination by the agency that the applicant or person has committed an act or omission that renders the applicant unqualified or unfit to fulfill the obligations of the license, listing, or registration.

C.S.S.B. 78 requires an applicant submitting an initial or renewal application for a license, listing, or registration subject to the bill's provisions to include with the application a written statement of the name of any person who is or will be a controlling person, as determined by the applicable agency regulating the person, of the entity for which the license, listing, or registration is sought and any other relevant information required by executive commissioner rule.

C.S.S.B. 78 requires the executive commissioner, not later than March 1, 2012, to adopt the rules necessary to implement the bill's provisions. The bill provides that a health and human services agency is not required to maintain records of adverse licensing, listing, or registration decisions until March 1, 2012.

#### **EFFECTIVE DATE**

September 1, 2011.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 78 contains a provision not included in the original making the bill's provisions inapplicable to an agency decision that did not result in a final order or that was reversed on appeal. The substitute differs from the original in conforming and nonsubstantive ways.