

By: Menendez, Miles, Dukes

H.B. No. 985

Substitute the following for H.B. No. 985:

By: Hughes

C.S.H.B. No. 985

A BILL TO BE ENTITLED

AN ACT

relating to the abuse, neglect, and exploitation of residents of certain facilities; creating an offense; providing penalties.

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

SECTION 1. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 260 to read as follows:

CHAPTER 260. REPORTS OF ABUSE, NEGLECT, AND EXPLOITATION OF RESIDENTS OF CERTAIN FACILITIES

Sec. 260.001. DEFINITIONS. In this chapter:

(1) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(B) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure), or Chapter 22, Penal Code (assaultive offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Executive commissioner" means the executive

1 commissioner of the Health and Human Services Commission.

2 (4) "Exploitation" means the illegal or improper act  
3 or process of a caregiver, family member, or other individual who  
4 has an ongoing relationship with the resident using the resources  
5 of a resident for monetary or personal benefit, profit, or gain  
6 without the informed consent of the resident.

7 (5) "Facility" means:

8 (A) an institution as that term is defined by  
9 Section 242.002; and

10 (B) an assisted living facility as that term is  
11 defined by Section 247.002.

12 (6) "Neglect" means the failure to provide for one's  
13 self the goods or services, including medical services, which are  
14 necessary to avoid physical or emotional harm or pain or the failure  
15 of a caregiver to provide such goods or services.

16 (7) "Resident" means an individual, including a  
17 patient, who resides in a facility.

18 Sec. 260.002. REPORTING OF ABUSE, NEGLECT, AND  
19 EXPLOITATION. (a) A person, including an owner or employee of a  
20 facility, who has cause to believe that the physical or mental  
21 health or welfare of a resident has been or may be adversely  
22 affected by abuse, neglect, or exploitation caused by another  
23 person shall report the abuse, neglect, or exploitation in  
24 accordance with this chapter.

25 (b) Each facility shall require each employee of the  
26 facility, as a condition of employment with the facility, to sign a  
27 statement that the employee realizes that the employee may be

1 criminally liable for failure to report those abuses.

2 (c) A person shall make an oral report immediately on  
3 learning of the abuse, neglect, or exploitation and shall make a  
4 written report to the department not later than the fifth day after  
5 the oral report is made.

6 Sec. 260.003. CONTENTS OF REPORT. (a) A report of abuse,  
7 neglect, or exploitation is nonaccusatory and reflects the  
8 reporting person's belief that a resident has been or will be  
9 abused, neglected, or exploited or has died of abuse or neglect.

10 (b) The report must contain:

11 (1) the name and address of the resident;

12 (2) the name and address of the person responsible for  
13 the care of the resident, if available; and

14 (3) other relevant information.

15 (c) Except for an anonymous report under Section 260.004, a  
16 report of abuse, neglect, or exploitation under Section 260.002  
17 should also include the address or phone number of the person making  
18 the report so that an investigator can contact the person for any  
19 necessary additional information. The phone number, address, and  
20 name of the person making the report must be deleted from any copy  
21 of any type of report that is released to the public, to the  
22 facility, or to an owner or agent of the facility.

23 Sec. 260.004. ANONYMOUS REPORTS OF ABUSE, NEGLECT, OR  
24 EXPLOITATION. (a) An anonymous report of abuse, neglect, or  
25 exploitation, although not encouraged, shall be received and acted  
26 on in the same manner as an acknowledged report.

27 (b) An anonymous report about a specific individual that

1 accuses the individual of abuse, neglect, or exploitation need not  
2 be investigated.

3 Sec. 260.005. TELEPHONE HOTLINE; PROCESSING OF REPORTS.

4 (a) The department shall operate the department's telephone hotline  
5 to:

6 (1) receive reports of abuse, neglect, or  
7 exploitation; and

8 (2) dispatch investigators.

9 (b) A report of abuse, neglect, or exploitation shall be  
10 made to the department's telephone hotline or to a local or state  
11 law enforcement agency. A report made relating to abuse, neglect,  
12 or exploitation or another complaint described by Section  
13 260.007(c)(1) shall be made to the department's telephone hotline  
14 and to the law enforcement agency described by Section 260.017(a).

15 (c) Except as provided by Section 260.017, a local or state  
16 law enforcement agency that receives a report of abuse, neglect, or  
17 exploitation shall refer the report to the department.

18 Sec. 260.006. NOTICE. (a) Each facility shall prominently  
19 and conspicuously post a sign for display in a public area of the  
20 facility that is readily available to residents, employees, and  
21 visitors.

22 (b) The sign must include the statement: CASES OF SUSPECTED  
23 ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE TEXAS  
24 DEPARTMENT OF AGING AND DISABILITY SERVICES BY CALLING (insert  
25 telephone hotline number).

26 (c) A facility shall provide the telephone hotline number to  
27 an immediate family member of a resident of the facility upon the

1 resident's admission into the facility.

2 Sec. 260.007. INVESTIGATION AND REPORT OF DEPARTMENT. (a)  
3 The department shall make a thorough investigation after receiving  
4 an oral or written report of abuse, neglect, or exploitation under  
5 Section 260.002 or another complaint alleging abuse, neglect, or  
6 exploitation.

7 (b) The primary purpose of the investigation is the  
8 protection of the resident.

9 (c) The department shall begin the investigation:

10 (1) within 24 hours after receipt of the report or  
11 other allegation, if the report of abuse, neglect, exploitation, or  
12 other complaint alleges that:

13 (A) a resident's health or safety is in imminent  
14 danger;

15 (B) a resident has recently died because of  
16 conduct alleged in the report of abuse, neglect, exploitation, or  
17 other complaint;

18 (C) a resident has been hospitalized or been  
19 treated in an emergency room because of conduct alleged in the  
20 report of abuse, neglect, exploitation, or other complaint;

21 (D) a resident has been a victim of any act or  
22 attempted act described by Section 21.02, 21.11, 22.011, or 22.021,  
23 Penal Code; or

24 (E) a resident has suffered bodily injury, as  
25 that term is defined by Section 1.07, Penal Code, because of conduct  
26 alleged in the report of abuse, neglect, exploitation, or other  
27 complaint; or

1           (2) before the end of the next working day after the  
2 date of receipt of the report of abuse, neglect, exploitation, or  
3 other complaint, if the report or complaint alleges the existence  
4 of circumstances that could result in abuse, neglect, or  
5 exploitation and that could place a resident's health or safety in  
6 imminent danger.

7           (d) The department shall adopt rules governing the conduct  
8 of investigations, including procedures to ensure that the  
9 complainant and the resident, the resident's next of kin, and any  
10 person designated to receive information concerning the resident  
11 receive periodic information regarding the investigation.

12           (e) In investigating the report of abuse, neglect,  
13 exploitation, or other complaint, the investigator for the  
14 department shall:

15                 (1) make an unannounced visit to the facility to  
16 determine the nature and cause of the alleged abuse, neglect, or  
17 exploitation of the resident;

18                 (2) interview each available witness, including the  
19 resident who suffered the alleged abuse, neglect, or exploitation  
20 if the resident is able to communicate or another resident or other  
21 witness identified by any source as having personal knowledge  
22 relevant to the report of abuse, neglect, exploitation, or other  
23 complaint;

24                 (3) personally inspect any physical circumstance that  
25 is relevant and material to the report of abuse, neglect,  
26 exploitation, or other complaint and that may be objectively  
27 observed;

1           (4) make a photographic record of any injury to a  
2 resident, subject to Subsection (n); and

3           (5) write an investigation report that includes:  
4                 (A) the investigator's personal observations;  
5                 (B) a review of relevant documents and records;  
6                 (C) a summary of each witness statement,  
7 including the statement of the resident that suffered the alleged  
8 abuse, neglect, or exploitation and any other resident interviewed  
9 in the investigation; and

10                 (D) a statement of the factual basis for the  
11 findings for each incident or problem alleged in the report or other  
12 allegation.

13           (f) An investigator for an investigating agency shall  
14 conduct an interview under Subsection (e)(2) in private unless the  
15 witness expressly requests that the interview not be private.

16           (g) Not later than the 30th day after the date the  
17 investigation is complete, the investigator shall prepare the  
18 written report required by Subsection (e). The department shall  
19 make the investigation report available to the public on request  
20 after the date the department's letter of determination is  
21 complete. The department shall delete from any copy made available  
22 to the public:

23                 (1) the name of:  
24                         (A) any resident, unless the department receives  
25 written authorization from a resident or the resident's legal  
26 representative requesting the resident's name be left in the  
27 report;

1           (B) the person making the report of abuse,  
2 neglect, exploitation, or other complaint; and

3           (C) an individual interviewed in the  
4 investigation; and

5           (2) photographs of any injury to the resident.

6           (h) In the investigation, the department shall determine:

7           (1) the nature, extent, and cause of the abuse,  
8 neglect, or exploitation;

9           (2) the identity of the person responsible for the  
10 abuse, neglect, or exploitation;

11           (3) the names and conditions of the other residents;

12           (4) an evaluation of the persons responsible for the  
13 care of the residents;

14           (5) the adequacy of the facility environment; and

15           (6) any other information required by the department.

16           (i) If the department attempts to carry out an on-site  
17 investigation and it is shown that admission to the facility or any  
18 place where the resident is located cannot be obtained, a probate or  
19 county court shall order the person responsible for the care of the  
20 resident or the person in charge of a place where the resident is  
21 located to allow entrance for the interview and investigation.

22           (j) Before the completion of the investigation, the  
23 department shall file a petition for temporary care and protection  
24 of the resident if the department determines that immediate removal  
25 is necessary to protect the resident from further abuse, neglect,  
26 or exploitation.

27           (k) The department shall make a complete final written



1 report of the investigation and submit the report and its  
2 recommendations to the district attorney and, if a law enforcement  
3 agency has not investigated the report of abuse, neglect,  
4 exploitation, or other complaint, to the appropriate law  
5 enforcement agency.

6 (1) Within 24 hours after receipt of a report of abuse,  
7 neglect, exploitation, or other complaint described by Subsection  
8 (c)(1), the department shall report the report or complaint to the  
9 law enforcement agency described by Section 260.017(a). The  
10 department shall cooperate with that law enforcement agency in the  
11 investigation of the report or complaint as described by Section  
12 260.017.

13 (m) The inability or unwillingness of a local law  
14 enforcement agency to conduct a joint investigation under Section  
15 260.017 does not constitute grounds to prevent or prohibit the  
16 department from performing its duties under this chapter. The  
17 department shall document any instance in which a law enforcement  
18 agency is unable or unwilling to conduct a joint investigation  
19 under Section 260.017.

20 (n) If the department determines that, before a  
21 photographic record of an injury to a resident may be made under  
22 Subsection (e), consent is required under state or federal law, the  
23 investigator:

24 (1) shall seek to obtain any required consent; and  
25 (2) may not make the photographic record unless the  
26 consent is obtained.

27 Sec. 260.008. CONFIDENTIALITY. A report, record, or

1 working paper used or developed in an investigation made under this  
2 chapter and the name, address, and phone number of any person making  
3 a report under this chapter are confidential and may be disclosed  
4 only for purposes consistent with rules adopted by the executive  
5 commissioner. The report, record, or working paper and the name,  
6 address, and phone number of the person making the report shall be  
7 disclosed to a law enforcement agency as necessary to permit the law  
8 enforcement agency to investigate a report of abuse, neglect,  
9 exploitation, or other complaint in accordance with Section  
10 260.017.

11 Sec. 260.009. IMMUNITY. (a) A person who reports as  
12 provided by this chapter is immune from civil or criminal liability  
13 that, in the absence of the immunity, might result from making the  
14 report.

15 (b) The immunity provided by this section extends to  
16 participation in any judicial proceeding that results from the  
17 report.

18 (c) This section does not apply to a person who reports in  
19 bad faith or with malice.

20 Sec. 260.010. PRIVILEGED COMMUNICATIONS. In a proceeding  
21 regarding the abuse, neglect, or exploitation of a resident or the  
22 cause of any abuse, neglect, or exploitation, evidence may not be  
23 excluded on the ground of privileged communication except in the  
24 case of a communication between an attorney and client.

25 Sec. 260.011. CENTRAL REGISTRY. (a) The department shall  
26 maintain in the city of Austin a central registry of reported cases  
27 of resident abuse, neglect, or exploitation.

1       (b) The executive commissioner may adopt rules necessary to  
2 carry out this section.

3       (c) The rules shall provide for cooperation with hospitals  
4 and clinics in the exchange of reports of resident abuse, neglect,  
5 or exploitation.

6       Sec. 260.012. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A  
7 person commits an offense if the person has cause to believe that a  
8 resident's physical or mental health or welfare has been or may be  
9 further adversely affected by abuse, neglect, or exploitation and  
10 knowingly fails to report in accordance with Section 260.002.

11       (b) An offense under this section is a Class A misdemeanor.

12       Sec. 260.013. BAD FAITH, MALICIOUS, OR RECKLESS REPORTING;  
13 CRIMINAL PENALTY. (a) A person commits an offense if the person  
14 reports under this chapter in bad faith, maliciously, or  
15 recklessly.

16       (b) An offense under this section is a Class A misdemeanor.

17       (c) The criminal penalty provided by this section is in  
18 addition to any civil penalties for which the person may be liable.

19       Sec. 260.014. RETALIATION AGAINST EMPLOYEES PROHIBITED.

20       (a) In this section, "employee" means a person who is an employee  
21 of a facility or any other person who provides services for a  
22 facility for compensation, including a contract laborer for the  
23 facility.

24       (b) An employee has a cause of action against a facility, or  
25 the owner or another employee of the facility, that suspends or  
26 terminates the employment of the person or otherwise disciplines or  
27 discriminates or retaliates against the employee for reporting to

1 the employee's supervisor, an administrator of the facility, a  
2 state regulatory agency, or a law enforcement agency a violation of  
3 law, including a violation of Chapter 242 or 247 or a rule adopted  
4 under Chapter 242 or 247, or for initiating or cooperating in any  
5 investigation or proceeding of a governmental entity relating to  
6 care, services, or conditions at the facility.

7 (c) The petitioner may recover:

8 (1) the greater of \$1,000 or actual damages, including  
9 damages for mental anguish even if an injury other than mental  
10 anguish is not shown, and damages for lost wages if the petitioner's  
11 employment was suspended or terminated;

12 (2) exemplary damages;

13 (3) court costs; and

14 (4) reasonable attorney's fees.

15 (d) In addition to the amounts that may be recovered under  
16 Subsection (c), a person whose employment is suspended or  
17 terminated is entitled to appropriate injunctive relief,  
18 including, if applicable:

19 (1) reinstatement in the person's former position; and

20 (2) reinstatement of lost fringe benefits or seniority  
21 rights.

22 (e) The petitioner, not later than the 90th day after the  
23 date on which the person's employment is suspended or terminated,  
24 must bring suit or notify the Texas Workforce Commission of the  
25 petitioner's intent to sue under this section. A petitioner who  
26 notifies the Texas Workforce Commission under this subsection must  
27 bring suit not later than the 90th day after the date of the

1 delivery of the notice to the commission. On receipt of the notice,  
2 the commission shall notify the facility of the petitioner's intent  
3 to bring suit under this section.

4 (f) The petitioner has the burden of proof, except that  
5 there is a rebuttable presumption that the person's employment was  
6 suspended or terminated for reporting abuse, neglect, or  
7 exploitation if the person is suspended or terminated within 60  
8 days after the date on which the person reported in good faith.

9 (g) A suit under this section may be brought in the district  
10 court of the county in which:

11 (1) the plaintiff resides;

12 (2) the plaintiff was employed by the defendant; or

13 (3) the defendant conducts business.

14 (h) Each facility shall require each employee of the  
15 facility, as a condition of employment with the facility, to sign a  
16 statement that the employee understands the employee's rights under  
17 this section. The statement must be part of the statement required  
18 under Section 260.002. If a facility does not require an employee  
19 to read and sign the statement, the periods under Subsection (e) do  
20 not apply, and the petitioner must bring suit not later than the  
21 second anniversary of the date on which the person's employment is  
22 suspended or terminated.

23 Sec. 260.015. RETALIATION AGAINST VOLUNTEERS, RESIDENTS,  
24 OR FAMILY MEMBERS OR GUARDIANS OF RESIDENTS. (a) A facility may  
25 not retaliate or discriminate against a volunteer, resident, or  
26 family member or guardian of a resident because the volunteer,  
27 resident, resident's family member or guardian, or any other

1 person:

2 (1) makes a complaint or files a grievance concerning  
3 the facility;

4 (2) reports a violation of law, including a violation  
5 of Chapter 242 or 247 or a rule adopted under Chapter 242 or 247; or

6 (3) initiates or cooperates in an investigation or  
7 proceeding of a governmental entity relating to care, services, or  
8 conditions at the facility.

9 (b) A volunteer, resident, or family member or guardian of a  
10 resident who is retaliated or discriminated against in violation of  
11 Subsection (a) is entitled to sue for:

12 (1) injunctive relief;

13 (2) the greater of \$1,000 or actual damages, including  
14 damages for mental anguish even if an injury other than mental  
15 anguish is not shown;

16 (3) exemplary damages;

17 (4) court costs; and

18 (5) reasonable attorney's fees.

19 (c) A volunteer, resident, or family member or guardian of a  
20 resident who seeks relief under this section must report the  
21 alleged violation not later than the 180th day after the date on  
22 which the alleged violation of this section occurred or was  
23 discovered by the volunteer, resident, or family member or guardian  
24 of the resident through reasonable diligence.

25 (d) A suit under this section may be brought in the district  
26 court of the county in which the facility is located or in a  
27 district court of Travis County.

1       Sec. 260.016. REPORTS RELATING TO DEATHS OF RESIDENTS OF AN  
2 INSTITUTION. (a) In this section, "institution" has the meaning  
3 assigned by Section 242.002.

4       (b) An institution shall submit a report to the department  
5 concerning deaths of residents of the institution. The report must  
6 be submitted within 10 working days after the last day of each month  
7 in which a resident of the institution dies. The report must also  
8 include the death of a resident occurring within 24 hours after the  
9 resident is transferred from the institution to a hospital.

10       (c) The institution must make the report on a form  
11 prescribed by the department. The report must contain the name and  
12 social security number of the deceased.

13       (d) The department shall correlate reports under this  
14 section with death certificate information to develop data relating  
15 to the:

16               (1) name and age of the deceased;

17               (2) official cause of death listed on the death  
18 certificate;

19               (3) date, time, and place of death; and

20               (4) name and address of the institution in which the  
21 deceased resided.

22       (e) Except as provided by Subsection (f), a record under  
23 this section is confidential and not subject to the provisions of  
24 Chapter 552, Government Code.

25       (f) The department shall develop statistical information on  
26 official causes of death to determine patterns and trends of  
27 incidents of death among residents and in specific institutions.

1 Information developed under this subsection is public.

2 (g) A licensed institution shall make available historical  
3 statistics on all required information on request of an applicant  
4 or applicant's representative.

5 Sec. 260.017. DUTIES OF LAW ENFORCEMENT; JOINT  
6 INVESTIGATION. (a) The department shall investigate a report of  
7 abuse, neglect, exploitation, or other complaint described by  
8 Section 260.007(c)(1) jointly with:

9 (1) the municipal law enforcement agency, if the  
10 facility is located within the territorial boundaries of a  
11 municipality; or

12 (2) the sheriff's department of the county in which the  
13 facility is located, if the facility is not located within the  
14 territorial boundaries of a municipality.

15 (b) The law enforcement agency described by Subsection (a)  
16 shall acknowledge the report of abuse, neglect, exploitation, or  
17 other complaint and begin the joint investigation required by this  
18 section within 24 hours after receipt of the report or complaint.  
19 The law enforcement agency shall cooperate with the department and  
20 report to the department the results of the investigation.

21 (c) The requirement that the law enforcement agency and the  
22 department conduct a joint investigation under this section does  
23 not require that a representative of each agency be physically  
24 present during all phases of the investigation or that each agency  
25 participate equally in each activity conducted in the course of the  
26 investigation.

27 Sec. 260.018. CALL CENTER EVALUATION; REPORT. (a) The



1 department, using existing resources, shall test, evaluate, and  
2 determine the most effective and efficient staffing pattern for  
3 receiving and processing complaints by expanding customer service  
4 representatives' hours of availability at the department's  
5 telephone hotline call center.

6 (b) The department shall report the findings of the  
7 evaluation described by Subsection (a) to the House Committee on  
8 Human Services and the Senate Committee on Health and Human  
9 Services not later than September 1, 2012.

10 (c) This section expires October 31, 2012.

11 SECTION 2. Chapter 2, Code of Criminal Procedure, is  
12 amended by adding Article 2.271 to read as follows:

13 Art. 2.271. INVESTIGATION OF CERTAIN REPORTS ALLEGING  
14 ABUSE, NEGLECT, OR EXPLOITATION. Notwithstanding Article 2.27, on  
15 receipt of a report of abuse, neglect, exploitation, or other  
16 complaint of a resident of a nursing home, convalescent home, or  
17 other related institution or an assisted living facility, under  
18 Section 260.007(c)(1), Health and Safety Code, the appropriate  
19 local law enforcement agency shall investigate the report as  
20 required by Section 260.017, Health and Safety Code.

21 SECTION 3. Subchapter A, Chapter 242, Health and Safety  
22 Code, is amended by adding Section 242.018 to read as follows:

23 Sec. 242.018. COMPLIANCE WITH CHAPTER 260. (a) An  
24 institution shall comply with Chapter 260 and the rules adopted  
25 under that chapter.

26 (b) A person, including an owner or employee of an  
27 institution, shall comply with Chapter 260 and the rules adopted

1 under that chapter.

2 SECTION 4. Section 242.042(a), Health and Safety Code, is  
3 amended to read as follows:

4 (a) Each institution shall prominently and conspicuously  
5 post for display in a public area of the institution that is readily  
6 available to residents, employees, and visitors:

7 (1) the license issued under this chapter;

8 (2) a sign prescribed by the department that specifies  
9 complaint procedures established under this chapter or rules  
10 adopted under this chapter and that specifies how complaints may be  
11 registered with the department;

12 (3) a notice in a form prescribed by the department  
13 stating that licensing inspection reports and other related reports  
14 which show deficiencies cited by the department are available at  
15 the institution for public inspection and providing the  
16 department's toll-free telephone number that may be used to obtain  
17 information concerning the institution;

18 (4) a concise summary of the most recent inspection  
19 report relating to the institution;

20 (5) notice that the department can provide summary  
21 reports relating to the quality of care, recent investigations,  
22 litigation, and other aspects of the operation of the institution;

23 (6) notice that the Texas Board of Nursing Facility  
24 Administrators can provide information about the nursing facility  
25 administrator;

26 (7) any notice or written statement required to be  
27 posted under Section 242.072(c);

1 (8) notice that informational materials relating to  
2 the compliance history of the institution are available for  
3 inspection at a location in the institution specified by the sign;  
4 ~~[and]~~

5 (9) notice that employees, other staff, residents,  
6 volunteers, and family members and guardians of residents are  
7 protected from discrimination or retaliation as provided by  
8 Sections 260.014 and 260.015; and

9 (10) a sign required to be posted under Section  
10 260.006(a) [242.133 and 242.1335].

11 SECTION 5. Section 242.0665(b), Health and Safety Code, is  
12 amended to read as follows:

13 (b) Subsection (a) does not apply:

14 (1) to a violation that the department determines:

15 (A) results in serious harm to or death of a  
16 resident;

17 (B) constitutes a serious threat to the health or  
18 safety of a resident; or

19 (C) substantially limits the institution's  
20 capacity to provide care;

21 (2) to a violation described by Sections  
22 242.066(a)(2)-(7);

23 (3) to a violation of Section 260.014 ~~[242.133]~~ or  
24 260.015 ~~[242.1335]~~; or

25 (4) to a violation of a right of a resident adopted  
26 under Subchapter L.

27 SECTION 6. Sections 242.848(a) and (b), Health and Safety

1 Code, are amended to read as follows:

2 (a) For purposes of the duty to report abuse or neglect  
3 under Section 260.002 [~~242.122~~] and the criminal penalty for the  
4 failure to report abuse or neglect under Section 260.012 [~~242.131~~],  
5 a person who is conducting electronic monitoring on behalf of a  
6 resident under this subchapter is considered to have viewed or  
7 listened to a tape or recording made by the electronic monitoring  
8 device on or before the 14th day after the date the tape or  
9 recording is made.

10 (b) If a resident who has capacity to determine that the  
11 resident has been abused or neglected and who is conducting  
12 electronic monitoring under this subchapter gives a tape or  
13 recording made by the electronic monitoring device to a person and  
14 directs the person to view or listen to the tape or recording to  
15 determine whether abuse or neglect has occurred, the person to whom  
16 the resident gives the tape or recording is considered to have  
17 viewed or listened to the tape or recording on or before the seventh  
18 day after the date the person receives the tape or recording for  
19 purposes of the duty to report abuse or neglect under Section  
20 260.002 [~~242.122~~] and of the criminal penalty for the failure to  
21 report abuse or neglect under Section 260.012 [~~242.131~~].

22 SECTION 7. Subchapter A, Chapter 247, Health and Safety  
23 Code, is amended by adding Section 247.007 to read as follows:

24 Sec. 247.007. COMPLIANCE WITH CHAPTER 260. (a) An assisted  
25 living facility shall comply with Chapter 260 and the rules adopted  
26 under that chapter.

27 (b) A person, including an owner or employee of an assisted

1 living facility, shall comply with Chapter 260 and the rules  
2 adopted under that chapter.

3 SECTION 8. Section 247.043(a), Health and Safety Code, is  
4 amended to read as follows:

5 (a) The department shall conduct an investigation in  
6 accordance with Section 260.007 after receiving a report [~~a~~  
7 ~~preliminary investigation of each allegation~~] of abuse,  
8 exploitation, or neglect of a resident of an assisted living  
9 facility [~~to determine if there is evidence to corroborate the~~  
10 ~~allegation. If the department determines that there is evidence to~~  
11 ~~corroborate the allegation, the department shall conduct a thorough~~  
12 ~~investigation of the allegation~~].

13 SECTION 9. Section 247.0452(b), Health and Safety Code, is  
14 amended to read as follows:

15 (b) Subsection (a) does not apply:

16 (1) to a violation that the department determines  
17 results in serious harm to or death of a resident;

18 (2) to a violation described by Sections  
19 247.0451(a)(2)-(7) or a violation of Section 260.014 or 260.015;

20 (3) to a second or subsequent violation of:

21 (A) a right of the same resident under Section  
22 247.064; or

23 (B) the same right of all residents under Section  
24 247.064; or

25 (4) to a violation described by Section 247.066, which  
26 contains its own right to correct provisions.

27 SECTION 10. Section 48.003, Human Resources Code, is

1 amended to read as follows:

2           Sec. 48.003. INVESTIGATIONS IN NURSING HOMES, ASSISTED  
3 LIVING FACILITIES, AND SIMILAR FACILITIES. (a) This chapter does  
4 not apply if the alleged or suspected abuse, neglect, or  
5 exploitation occurs in a facility licensed under Chapter 242 or  
6 247, Health and Safety Code.

7           (b) Alleged or suspected abuse, neglect, or exploitation  
8 that occurs in a facility licensed under Chapter 242 or 247, Health  
9 and Safety Code, is governed by Chapter 260 [~~Subchapter B, Chapter~~  
10 ~~242~~], Health and Safety Code.

11           SECTION 11. Subchapter E, Chapter 242, Health and Safety  
12 Code, is repealed.

13           SECTION 12. (a) The repeal by this Act of Section 242.131,  
14 Health and Safety Code, does not apply to an offense committed under  
15 that section before the effective date of this Act. An offense  
16 committed before the effective date of this Act is governed by that  
17 section as it existed on the date the offense was committed, and the  
18 former law is continued in effect for that purpose. For purposes of  
19 this subsection, an offense was committed before the effective date  
20 of this Act if any element of the offense occurred before that date.

21           (b) The repeal by this Act of Sections 242.133 and 242.1335,  
22 Health and Safety Code, does not apply to a cause of action that  
23 accrues before the effective date of this Act. A cause of action  
24 that accrues before the effective date of this Act is governed by  
25 Section 242.133 or 242.1335, Health and Safety Code, as applicable,  
26 as the section existed at the time the cause of action accrued, and  
27 the former law is continued in effect for that purpose.

1           (c) The change in law made by this Act by the repeal of  
2 Subchapter E, Chapter 242, Health and Safety Code, does not apply to  
3 a disciplinary action under Subchapter C, Chapter 242, Health and  
4 Safety Code, for conduct that occurred before the effective date of  
5 this Act. Conduct that occurs before the effective date of this Act  
6 is governed by the law as it existed on the date the conduct  
7 occurred, and the former law is continued in effect for that  
8 purpose.

9           SECTION 13. (a) The Department of Aging and Disability  
10 Services shall implement Chapter 260, Health and Safety Code, as  
11 added by this Act, using only existing resources and personnel.

12           (b) The Department of Aging and Disability Services shall  
13 ensure that the services provided on the effective date of this Act  
14 are at least as comprehensive as the services provided on the day  
15 before the effective date of this Act.

16           SECTION 14. 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, 2011.