

By: Menendez

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 caretaker, 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 caretaker, 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 caretaker, 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 caretaker 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 establish and operate a telephone
5 hotline, at each of the department's regional offices, to receive
6 reports of abuse, neglect, or exploitation.

7 (b) Each of the department's regional offices shall
8 continuously operate the telephone hotline, with a live operator to
9 receive reports and to dispatch investigators.

10 (c) A report of abuse, neglect, or exploitation shall be
11 made to the department's telephone hotline for the region where the
12 abuse, neglect, or exploitation occurred or may occur or to a local
13 or state law enforcement agency. A report made relating to abuse,
14 neglect, or exploitation or another complaint described by Section
15 260.007(c)(1) shall be made to the department's telephone hotline
16 for the region where the abuse, neglect, or exploitation occurred
17 or may occur and to the law enforcement agency described by Section
18 260.017(a).

19 (d) Except as provided by Section 260.017, a local or state
20 law enforcement agency that receives a report of abuse, neglect, or
21 exploitation shall refer the report to the department.

22 (e) The executive commissioner by rule shall establish the
23 qualifications necessary for a person to work as a live operator.

24 Sec. 260.006. NOTICE. (a) Each facility shall prominently
25 and conspicuously post a sign for display in a public area of the
26 facility that is readily available to residents, employees, and
27 visitors.

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

5 (c) A facility shall provide the regional telephone hotline
6 number to an immediate family member of a resident of the facility
7 upon the resident's admission into the facility.

8 Sec. 260.007. INVESTIGATION AND REPORT OF DEPARTMENT. (a)
9 The department shall make a thorough investigation after receiving
10 an oral or written report of abuse, neglect, or exploitation under
11 Section 260.002 or another complaint alleging abuse, neglect, or
12 exploitation.

13 (b) The primary purpose of the investigation is the
14 protection of the resident.

15 (c) The department shall begin the investigation:

16 (1) within 24 hours after receipt of the report or
17 other allegation, if the report of abuse, neglect, exploitation, or
18 other complaint alleges that:

19 (A) a resident's health or safety is in imminent
20 danger;

21 (B) a resident has recently died because of
22 conduct alleged in the report of abuse, neglect, exploitation, or
23 other complaint;

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

27 (D) a resident has been a victim of any act or

1 attempted act described by Section 21.02, 21.11, 22.011, or 22.021,
2 Penal Code; or

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

7 (2) before the end of the next working day after the
8 date of receipt of the report of abuse, neglect, exploitation, or
9 other complaint, if the report or complaint alleges the existence
10 of circumstances that could result in abuse, neglect, or
11 exploitation and that could place a resident's health or safety in
12 imminent danger.

13 (d) The department shall adopt rules governing the conduct
14 of investigations, including procedures to ensure that the
15 complainant and the resident, the resident's next of kin, and any
16 person designated to receive information concerning the resident
17 receive periodic information regarding the investigation.

18 (e) In investigating the report of abuse, neglect,
19 exploitation, or other complaint, the investigator for the
20 department shall:

21 (1) make an unannounced visit to the facility to
22 determine the nature and cause of the alleged abuse, neglect, or
23 exploitation of the resident;

24 (2) interview each available witness, including the
25 resident who suffered the alleged abuse, neglect, or exploitation
26 if the resident is able to communicate or another resident or other
27 witness identified by any source as having personal knowledge

1 relevant to the report of abuse, neglect, exploitation, or other
2 complaint;

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

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

9 (5) write an investigation report that includes:

10 (A) the investigator's personal observations;

11 (B) a review of relevant documents and records;

12 (C) a summary of each witness statement,
13 including the statement of the resident that suffered the alleged
14 abuse, neglect, or exploitation and any other resident interviewed
15 in the investigation; and

16 (D) a statement of the factual basis for the
17 findings for each incident or problem alleged in the report or other
18 allegation.

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

22 (g) Not later than the 30th day after the date the
23 investigation is complete, the investigator shall prepare the
24 written report required by Subsection (e). The department shall
25 make the investigation report available to the public on request
26 after the date the department's letter of determination is
27 complete. The department shall delete from any copy made available

1 to the public:

2 (1) the name of:

3 (A) any resident, unless the department receives
4 written authorization from a resident or the resident's legal
5 representative requesting the resident's name be left in the
6 report;

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

9 (C) an individual interviewed in the
10 investigation; and

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

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

13 (1) the nature, extent, and cause of the abuse,
14 neglect, or exploitation;

15 (2) the identity of the person responsible for the
16 abuse, neglect, or exploitation;

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

18 (4) an evaluation of the persons responsible for the
19 care of the residents;

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

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

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

1 (j) Before the completion of the investigation, the
2 department shall file a petition for temporary care and protection
3 of the resident if the department determines that immediate removal
4 is necessary to protect the resident from further abuse, neglect,
5 or exploitation.

6 (k) The department shall make a complete final written
7 report of the investigation and submit the report and its
8 recommendations to the district attorney and, if a law enforcement
9 agency has not investigated the report of abuse, neglect,
10 exploitation, or other complaint, to the appropriate law
11 enforcement agency.

12 (l) Within 24 hours after receipt of a report of abuse,
13 neglect, exploitation, or other complaint described by Subsection
14 (c)(1), the department shall report the report or complaint to the
15 law enforcement agency described by Section 260.017(a). The
16 department shall cooperate with that law enforcement agency in the
17 investigation of the report or complaint as described by Section
18 260.017.

19 (m) The inability or unwillingness of a local law
20 enforcement agency to conduct a joint investigation under Section
21 260.017 does not constitute grounds to prevent or prohibit the
22 department from performing its duties under this chapter. The
23 department shall document any instance in which a law enforcement
24 agency is unable or unwilling to conduct a joint investigation
25 under Section 260.017.

26 (n) If the department determines that, before a
27 photographic record of an injury to a resident may be made under

1 Subsection (e), consent is required under state or federal law, the
2 investigator:

3 (1) shall seek to obtain any required consent; and

4 (2) may not make the photographic record unless the
5 consent is obtained.

6 Sec. 260.008. CONFIDENTIALITY. A report, record, or
7 working paper used or developed in an investigation made under this
8 chapter and the name, address, and phone number of any person making
9 a report under this chapter are confidential and may be disclosed
10 only for purposes consistent with rules adopted by the executive
11 commissioner. The report, record, or working paper and the name,
12 address, and phone number of the person making the report shall be
13 disclosed to a law enforcement agency as necessary to permit the law
14 enforcement agency to investigate a report of abuse, neglect,
15 exploitation, or other complaint in accordance with Section
16 260.017.

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

21 (b) The immunity provided by this section extends to
22 participation in any judicial proceeding that results from the
23 report.

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

26 Sec. 260.010. PRIVILEGED COMMUNICATIONS. In a proceeding
27 regarding the abuse, neglect, or exploitation of a resident or the

1 cause of any abuse, neglect, or exploitation, evidence may not be
2 excluded on the ground of privileged communication except in the
3 case of a communication between an attorney and client.

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

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

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

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

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

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

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

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

25 Sec. 260.014. RETALIATION AGAINST EMPLOYEES PROHIBITED.
26 (a) In this section, "employee" means a person who is an employee
27 of a facility or any other person who provides services for a

1 facility for compensation, including a contract laborer for the
2 facility.

3 (b) An employee has a cause of action against a facility, or
4 the owner or another employee of the facility, that suspends or
5 terminates the employment of the person or otherwise disciplines or
6 discriminates or retaliates against the employee for reporting to
7 the employee's supervisor, an administrator of the facility, a
8 state regulatory agency, or a law enforcement agency a violation of
9 law, including a violation of Chapter 242 or 247 or a rule adopted
10 under Chapter 242 or 247, or for initiating or cooperating in any
11 investigation or proceeding of a governmental entity relating to
12 care, services, or conditions at the facility.

13 (c) The petitioner may recover:

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

18 (2) exemplary damages;

19 (3) court costs; and

20 (4) reasonable attorney's fees.

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

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

26 (2) reinstatement of lost fringe benefits or seniority
27 rights.

1 (e) The petitioner, not later than the 90th day after the
2 date on which the person's employment is suspended or terminated,
3 must bring suit or notify the Texas Workforce Commission of the
4 petitioner's intent to sue under this section. A petitioner who
5 notifies the Texas Workforce Commission under this subsection must
6 bring suit not later than the 90th day after the date of the
7 delivery of the notice to the commission. On receipt of the notice,
8 the commission shall notify the facility of the petitioner's intent
9 to bring suit under this section.

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

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

17 (1) the plaintiff resides;

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

19 (3) the defendant conducts business.

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

1 suspended or terminated.

2 Sec. 260.015. RETALIATION AGAINST VOLUNTEERS, RESIDENTS,
3 OR FAMILY MEMBERS OR GUARDIANS OF RESIDENTS. (a) A facility may
4 not retaliate or discriminate against a volunteer, resident, or
5 family member or guardian of a resident because the volunteer,
6 resident, resident's family member or guardian, or any other
7 person:

8 (1) makes a complaint or files a grievance concerning
9 the facility;

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

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

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

18 (1) injunctive relief;

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

22 (3) exemplary damages;

23 (4) court costs; and

24 (5) reasonable attorney's fees.

25 (c) A volunteer, resident, or family member or guardian of a
26 resident who seeks relief under this section must report the
27 alleged violation not later than the 180th day after the date on

1 which the alleged violation of this section occurred or was
2 discovered by the volunteer, resident, or family member or guardian
3 of the resident through reasonable diligence.

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

7 Sec. 260.016. REPORTS RELATING TO RESIDENT DEATHS. (a) A
8 facility shall submit a report to the department concerning deaths
9 of residents of the facility. The report must be submitted within
10 10 working days after the last day of each month in which a resident
11 of the facility dies. The report must also include the death of a
12 resident occurring within 24 hours after the resident is
13 transferred from the facility to a hospital.

14 (b) The facility must make the report on a form prescribed
15 by the department. The report must contain the name and social
16 security number of the deceased.

17 (c) The department shall correlate reports under this
18 section with death certificate information to develop data relating
19 to the:

20 (1) name and age of the deceased;

21 (2) official cause of death listed on the death
22 certificate;

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

24 (4) name and address of the facility in which the
25 deceased resided.

26 (d) Except as provided by Subsection (e), a record under
27 this section is confidential and not subject to the provisions of

1 Chapter 552, Government Code.

2 (e) The department shall develop statistical information on
3 official causes of death to determine patterns and trends of
4 incidents of death among residents and in specific facilities.
5 Information developed under this subsection is public.

6 (f) A licensed facility shall make available historical
7 statistics on all required information on request of an applicant
8 or applicant's representative.

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

13 (1) the municipal law enforcement agency, if the
14 facility is located within the territorial boundaries of a
15 municipality; or

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

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

25 (c) The requirement that the law enforcement agency and the
26 department conduct a joint investigation under this section does
27 not require that a representative of each agency be physically

1 present during all phases of the investigation or that each agency
2 participate equally in each activity conducted in the course of the
3 investigation.

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

6 Art. 2.271. INVESTIGATION OF CERTAIN REPORTS ALLEGING
7 ABUSE, NEGLIGENCE, OR EXPLOITATION. Notwithstanding Article 2.27, on
8 receipt of a report of abuse, neglect, exploitation, or other
9 complaint of a resident of a nursing home, convalescent home, or
10 other related institution or an assisted living facility, under
11 Section 260.007(c)(1), Health and Safety Code, the appropriate
12 local law enforcement agency shall investigate the report as
13 required by Section 260.017, Health and Safety Code.

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

16 Sec. 242.018. COMPLIANCE WITH CHAPTER 260. (a) An
17 institution shall comply with Chapter 260 and the rules adopted
18 under that chapter.

19 (b) A person, including an owner or employee of an
20 institution, shall comply with Chapter 260 and the rules adopted
21 under that chapter.

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

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

27 (1) the license issued under this chapter;

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

5 (3) a notice in a form prescribed by the department
6 stating that licensing inspection reports and other related reports
7 which show deficiencies cited by the department are available at
8 the institution for public inspection and providing the
9 department's toll-free telephone number that may be used to obtain
10 information concerning the institution;

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

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

16 (6) notice that the Texas Board of Nursing Facility
17 Administrators can provide information about the nursing facility
18 administrator;

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

21 (8) notice that informational materials relating to
22 the compliance history of the institution are available for
23 inspection at a location in the institution specified by the sign;
24 [~~and~~]

25 (9) notice that employees, other staff, residents,
26 volunteers, and family members and guardians of residents are
27 protected from discrimination or retaliation as provided by

1 Sections 260.014 and 260.015; and

2 (10) a sign required to be posted under Section
3 260.006(a) [242.133 and 242.1335].

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

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

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

8 (A) results in serious harm to or death of a
9 resident;

10 (B) constitutes a serious threat to the health or
11 safety of a resident; or

12 (C) substantially limits the institution's
13 capacity to provide care;

14 (2) to a violation described by Sections
15 242.066(a)(2)-(7);

16 (3) to a violation of Section 260.014 [~~242.133~~] or
17 260.015 [~~242.1335~~]; or

18 (4) to a violation of a right of a resident adopted
19 under Subchapter L.

20 SECTION 6. Sections 242.848(a) and (b), Health and Safety
21 Code, are amended to read as follows:

22 (a) For purposes of the duty to report abuse or neglect
23 under Section 260.002 [~~242.122~~] and the criminal penalty for the
24 failure to report abuse or neglect under Section 260.012 [~~242.131~~],
25 a person who is conducting electronic monitoring on behalf of a
26 resident under this subchapter is considered to have viewed or
27 listened to a tape or recording made by the electronic monitoring

1 device on or before the 14th day after the date the tape or
2 recording is made.

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

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

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

20 (b) A person, including an owner or employee of an assisted
21 living facility, shall comply with Chapter 260 and the rules
22 adopted under that chapter.

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

25 (a) The department shall conduct an investigation in
26 accordance with Section 260.007 after receiving a report [~~a~~
27 ~~preliminary investigation of each allegation]~~ of abuse,

1 exploitation, or neglect of a resident of an assisted living
2 facility [~~to determine if there is evidence to corroborate the~~
3 ~~allegation. If the department determines that there is evidence to~~
4 ~~corroborate the allegation, the department shall conduct a thorough~~
5 ~~investigation of the allegation].~~

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

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

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

11 (2) to a violation described by Sections
12 247.0451(a)(2)-(7) or a violation of Section 260.014 or 260.015;

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

14 (A) a right of the same resident under Section
15 247.064; or

16 (B) the same right of all residents under Section
17 247.064; or

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

20 SECTION 10. Section 48.003, Human Resources Code, is
21 amended to read as follows:

22 Sec. 48.003. INVESTIGATIONS IN NURSING HOMES, ASSISTED
23 LIVING FACILITIES, AND SIMILAR FACILITIES. (a) This chapter does
24 not apply if the alleged or suspected abuse, neglect, or
25 exploitation occurs in a facility licensed under Chapter 242 or
26 247, Health and Safety Code.

27 (b) Alleged or suspected abuse, neglect, or exploitation

1 that occurs in a facility licensed under Chapter 242 or 247, Health
2 and Safety Code, is governed by Chapter 260 [~~Subchapter B, Chapter~~
3 ~~242~~], Health and Safety Code.

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

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

14 (b) The repeal by this Act of Sections 242.133 and 242.1335,
15 Health and Safety Code, does not apply to a cause of action that
16 accrues before the effective date of this Act. A cause of action
17 that accrues before the effective date of this Act is governed by
18 Section 242.133 or 242.1335, Health and Safety Code, as applicable,
19 as the section existed at the time the cause of action accrued, and
20 the former law is continued in effect for that purpose.

21 (c) The change in law made by this Act by the repeal of
22 Subchapter E, Chapter 242, Health and Safety Code, does not apply to
23 a disciplinary action under Subchapter C, Chapter 242, Health and
24 Safety Code, for conduct that occurred before the effective date of
25 this Act. Conduct that occurs before the effective date of this Act
26 is governed by the law as it existed on the date the conduct
27 occurred, and the former law is continued in effect for that

1 purpose.

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

5 (b) The Department of Aging and Disability Services shall
6 ensure that the services provided on the effective date of this Act
7 are at least as comprehensive as the services provided on the day
8 before the effective date of this Act.

9 SECTION 14. This Act takes effect immediately if it
10 receives a vote of two-thirds of all the members elected to each
11 house, as provided by Section 39, Article III, Texas Constitution.
12 If this Act does not receive the vote necessary for immediate
13 effect, this Act takes effect September 1, 2011.