

BILL ANALYSIS

C.S.H.B. 2683
By: Price
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In an effort to better serve and protect residents and consumers in facilities licensed or regulated by the Department of Aging and Disability Services (DADS), the legislature created the employee misconduct registry and the nurse aide registry to ensure that personnel who commit acts of abuse, neglect, exploitation, misappropriation, or misconduct against residents and consumers are denied employment in certain facilities and agencies regulated by DADS. These facilities and agencies are required to check each registry before hiring an individual and are prohibited from hiring an individual listed on either registry.

In recent years, there has been a growing self-determination movement within the aging and disabled communities, and many people are deciding to use the consumer-directed service model option of care to have more control over the services they receive. Interested parties assert that, because this option was not available when the employment registries were developed, it would be beneficial to require individuals using this option to check the employee misconduct registry and the nurse aide registry before hiring an employee to ensure that such individuals are protected wherever they receive services.

Interested parties have also identified several necessary updates to the laws governing the employee misconduct registry and the nurse aide registry, such as recordkeeping requirements for providers who must perform these background checks, the conduct for which a person may not be employed by an applicable facility or by an individual employer participating in the consumer-directed option and hiring service providers to deliver program services, and the procedures for a hearing regarding an occurrence of misconduct. The parties contend that these changes are necessary to protect clients and residents from exploitation and other types of abuse and to ensure that hearings on the occurrence of misconduct are held in a timely manner so that employees guilty of misconduct are no longer eligible for employment at an applicable facility. C.S.H.B. 2683 seeks to address these issues in an effort to prevent further abuse and neglect of residents in facilities regulated by DADS.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2683 amends the Health and Safety Code to specify that an individual employer, defined as an individual or legally authorized representative who participates in the consumer-directed service option and is responsible for hiring service providers to deliver program services, may not employ an applicant if the employer determines, as a result of a criminal history check, that the applicant has been convicted of an offense, the conviction of which is a contraindication to direct contact with the individual using the consumer-directed services, rather than a contraindication to employment with the consumers the individual employer serves. The bill makes applicable to an individual employer certain statutory provisions relating to the

verification of the status of an applicant for employment in the nurse aide registry maintained by and the employee misconduct registry established by the Department of Aging and Disability Services (DADS), the discharge of an employee based on the employee's designation in the nurse aide registry or the employee misconduct registry or a criminal history check, and the required annual search of the nurse aide registry and the employee misconduct registry. The bill specifies, for purposes of provisions relating to the nurse aide registry, that a facility or an individual employer or financial management services agency on behalf of an individual employer must maintain in the facility's or individual employer's books and records, rather than in each employee's personnel file, a copy of the results of the required annual search of the employee misconduct registry and the nurse aide registry.

C.S.H.B. 2683 includes among the persons prohibited from employment by an individual employer or by certain facilities serving the elderly, serving persons with disabilities, or serving persons with terminal illnesses, a person for whom the individual employer or the facility is entitled to obtain criminal history record information and who has been convicted of an offense of exploitation of a child, elderly individual, or disabled individual.

C.S.H.B. 2683 expands the definition of "employee," for purposes of statutory provisions relating to the employee misconduct registry, to include a person who works for an individual employer; is an individual who provides personal care services, active treatment, or any other personal services to an individual using the consumer-directed service option; and is not licensed by an agency of the state to perform the services the employee performs for the individual using the consumer-directed service option. The bill makes statutory provisions relating to the employee misconduct registry applicable to such an employee and to an individual employer. The bill requires DADS to complete a hearing requested by an employee relating to an occurrence of reportable conduct and complete the hearing record not later than the 120th day after the date DADS receives a request for a hearing. The bill specifies, for purposes of provisions relating to the employee misconduct registry, that a facility, agency, individual employer, or financial management services agency on behalf of an individual employer must maintain in the facility's or individual employer's books and records, rather than in each employee's personnel file, a copy of the results of the required annual search of the employee misconduct registry and the nurse aide registry.

C.S.H.B. 2683 repeals Section 250.003(c-1), Health and Safety Code.

EFFECTIVE DATE

January 1, 2014.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2683 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 250.001, Health and Safety Code, is amended by adding Subdivisions (1-a) and (1-b) and amending Subdivisions (2) and (3-b).

SECTION 2. Sections 250.003(a), (c), and (d), Health and Safety Code, are amended to

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Sections 250.003(a), (c), and (d), Health and Safety Code, are amended to

read as follows:

(a) A facility or individual employer may not employ an applicant:

(1) if the facility or individual employer determines, as a result of a criminal history check, that the applicant has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the ~~[consumers the]~~ facility or to direct contact with the individual employer using the consumer-directed service option ~~[serves]~~;

(2) if the applicant is a nurse aide, until the facility or individual employer further verifies that the applicant is listed in the nurse aide registry; and

(3) until the facility or individual employer verifies that the applicant is not designated in the registry maintained under this chapter or in the employee misconduct registry maintained under Section 253.007 as having a finding entered into the registry concerning abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer ~~[of a facility]~~, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer ~~[a consumer's property]~~.

(c) A facility or individual employer shall immediately discharge any employee:

(1) who is designated in the nurse aide registry or the employee misconduct registry established under Chapter 253 as having committed an act of abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer ~~[of a facility]~~, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer; ~~[a consumer's property,]~~ or

(2) whose criminal history check reveals conviction of a crime that bars employment or that the individual employer or the facility determines is a contraindication to employment as provided by this chapter.

(d) In addition to the initial verification of employability, a facility or an individual employer or financial management services agency on behalf of an individual employer shall:

(1) annually search the nurse aide registry maintained under this chapter and the employee misconduct registry maintained under Section 253.007 to determine whether

read as follows:

(a) A facility or individual employer may not employ an applicant:

(1) if the facility or individual employer determines, as a result of a criminal history check, that the applicant has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the ~~[consumers the]~~ facility or to direct contact with the individual using the consumer-directed service option ~~[employer serves]~~;

(2) if the applicant is a nurse aide, until the facility or individual employer further verifies that the applicant is listed in the nurse aide registry; and

(3) until the facility or individual employer verifies that the applicant is not designated in the registry maintained under this chapter or in the employee misconduct registry maintained under Section 253.007 as having a finding entered into the registry concerning abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer ~~[of a facility]~~, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer ~~[a consumer's property]~~.

(c) A facility or individual employer shall immediately discharge any employee:

(1) who is designated in the nurse aide registry or the employee misconduct registry established under Chapter 253 as having committed an act of abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer ~~[of a facility]~~, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer; ~~[a consumer's property,]~~ or

(2) whose criminal history check reveals conviction of a crime that bars employment or that the individual employer or the facility determines is a contraindication to employment as provided by this chapter.

(d) In addition to the initial verification of employability, a facility or an individual employer or financial management services agency on behalf of an individual employer shall:

(1) annually search the nurse aide registry maintained under this chapter and the employee misconduct registry maintained under Section 253.007 to determine whether

any employee of the facility or of an individual employer is designated in either registry as having abused, neglected, or exploited a ~~[resident or]~~ consumer ~~[of a facility]~~ or an individual using the consumer-directed service option ~~[receiving services from a facility]~~; and
(2) maintain in the facility's or employer's books and records ~~[each employee's personnel file]~~ a copy of the results of the search conducted under Subdivision (1).

SECTION 3. Section 250.006(a), Health and Safety Code, is amended.

SECTION 4. Section 253.001, Health and Safety Code, is amended.

SECTION 5. Section 253.002(b), Health and Safety Code, is amended.

SECTION 6. Section 253.004, Health and Safety Code, is amended.

SECTION 7. Section 253.007(a), Health and Safety Code, is amended to read as follows:

(a) The department shall establish an employee misconduct registry. If the department in accordance with this chapter finds that an employee of a facility or of an individual employer has committed reportable conduct, the department shall make a record of the employee's name, the employee's address, the employee's social security number, the name of the facility or employer, the address of the facility or employer, the date the reportable conduct occurred, and a description of the reportable conduct.

SECTION 8. Section 253.008, Health and Safety Code, is amended to read as follows:
Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH.
(a) Before a facility or individual employer as defined in this chapter or an agency as

any employee of the facility or of an individual employer is designated in either registry as having abused, neglected, or exploited a ~~[resident or]~~ consumer ~~[of a facility]~~ or an individual using the consumer-directed service option ~~[receiving services from a facility]~~; and
(2) maintain in the facility's or individual employer's books and records ~~[each employee's personnel file]~~ a copy of the results of the search conducted under Subdivision (1).

SECTION 3. Same as introduced version.

SECTION 4. Substantially same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Substantially same as introduced version.

SECTION 8. Substantially the same as introduced version.

defined in Section 48.401, Human Resources Code, may hire an employee, the individual employer or a financial management services agency on behalf of the individual employer, the facility, or agency shall search the employee misconduct registry under this chapter and the nurse aide registry maintained under Chapter 250 as required by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the applicant for employment is designated in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a ~~[resident or] consumer [of a facility or agency or an individual receiving services from a facility or agency]~~.

(b) A facility, individual employer or financial management services agency on behalf of an individual employer, or agency may not employ a person who is listed in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a ~~[resident or] consumer [of a facility or agency or an individual receiving services from a facility or agency]~~.

(c) In addition to the initial verification of employability, a facility, ~~[or] agency,~~ individual employer, or financial management services agency on behalf of an individual employer shall:

(1) annually search the employee misconduct registry and the nurse aide registry maintained under Chapter 250 to determine whether any employee of the employer, facility, or applicable agency is designated in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a ~~[resident or] consumer [of a facility or agency or an individual receiving services from a facility or agency]~~; and

(2) maintain in the facility's or employer's books and records ~~[each employee's personnel file]~~ a copy of the results of the search conducted under Subdivision (1).

SECTION 9. Section 253.009(a), Health and Safety Code, is amended.

SECTION 9. Same as introduced version.

SECTION 10. Section 250.003(c-1), Health and Safety Code, is repealed.

SECTION 10. Same as introduced version.

SECTION 11. This Act takes effect January 1, 2014.

SECTION 11. Same as introduced version.