

AN ACT

relating to employment in certain consumer-directed services and by certain facilities and to the nurse aide registry and the employee misconduct registry.

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

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) to read as follows:

(1-a) "Consumer" means a resident of or an individual receiving services from a facility covered by this chapter.

(1-b) "Consumer-directed service option" has the meaning assigned by Section 531.051, Government Code.

(2) "Direct contact with a consumer" means any contact with a consumer [~~resident or client in a facility covered by this chapter~~].

(3-b) "Individual employer" means an individual or legally authorized representative who participates in the consumer-directed service option [~~described by Section 531.051, Government Code,~~] and is responsible for hiring service providers to deliver program services.

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

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

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

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

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

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

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

9 (1) annually search the nurse aide registry maintained
10 under this chapter and the employee misconduct registry maintained
11 under Section 253.007 to determine whether any employee of the
12 facility or of an individual employer is designated in either
13 registry as having abused, neglected, or exploited a [~~resident or~~
14 consumer ~~[of a facility]~~ or an individual using the
15 consumer-directed service option [~~receiving services from a~~
16 ~~facility~~]; and

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

20 SECTION 3. Section 250.006(a), Health and Safety Code, is
21 amended to read as follows:

22 (a) A person for whom the facility or the individual
23 employer is entitled to obtain criminal history record information
24 may not be employed in a facility or by an individual employer if
25 the person has been convicted of an offense listed in this
26 subsection:

27 (1) an offense under Chapter 19, Penal Code (criminal

- 1 homicide);
- 2 (2) an offense under Chapter 20, Penal Code
- 3 (kidnapping and unlawful restraint);
- 4 (3) an offense under Section 21.02, Penal Code
- 5 (continuous sexual abuse of young child or children), or Section
- 6 21.11, Penal Code (indecentcy with a child);
- 7 (4) an offense under Section 22.011, Penal Code
- 8 (sexual assault);
- 9 (5) an offense under Section 22.02, Penal Code
- 10 (aggravated assault);
- 11 (6) an offense under Section 22.04, Penal Code (injury
- 12 to a child, elderly individual, or disabled individual);
- 13 (7) an offense under Section 22.041, Penal Code
- 14 (abandoning or endangering child);
- 15 (8) an offense under Section 22.08, Penal Code (aiding
- 16 suicide);
- 17 (9) an offense under Section 25.031, Penal Code
- 18 (agreement to abduct from custody);
- 19 (10) an offense under Section 25.08, Penal Code (sale
- 20 or purchase of a child);
- 21 (11) an offense under Section 28.02, Penal Code
- 22 (arson);
- 23 (12) an offense under Section 29.02, Penal Code
- 24 (robbery);
- 25 (13) an offense under Section 29.03, Penal Code
- 26 (aggravated robbery);
- 27 (14) an offense under Section 21.08, Penal Code

- 1 (indecent exposure);
- 2 (15) an offense under Section 21.12, Penal Code
- 3 (improper relationship between educator and student);
- 4 (16) an offense under Section 21.15, Penal Code
- 5 (improper photography or visual recording);
- 6 (17) an offense under Section 22.05, Penal Code
- 7 (deadly conduct);
- 8 (18) an offense under Section 22.021, Penal Code
- 9 (aggravated sexual assault);
- 10 (19) an offense under Section 22.07, Penal Code
- 11 (terroristic threat);
- 12 (20) an offense under Section 32.53, Penal Code
- 13 (exploitation of a child, elderly individual, or disabled
- 14 individual);
- 15 (21) an offense under Section 33.021, Penal Code
- 16 (online solicitation of a minor);
- 17 (22) [~~21~~] an offense under Section 34.02, Penal Code
- 18 (money laundering);
- 19 (23) [~~22~~] an offense under Section 35A.02, Penal
- 20 Code (Medicaid fraud);
- 21 (24) [~~23~~] an offense under Section 36.06, Penal Code
- 22 (obstruction or retaliation);
- 23 (25) [~~24~~] an offense under Section 42.09, Penal Code
- 24 (cruelty to livestock animals), or under Section 42.092, Penal Code
- 25 (cruelty to nonlivestock animals); or
- 26 (26) [~~25~~] a conviction under the laws of another
- 27 state, federal law, or the Uniform Code of Military Justice for an

1 offense containing elements that are substantially similar to the
2 elements of an offense listed by this subsection.

3 SECTION 4. Section 253.001, Health and Safety Code, is
4 amended by adding Subdivisions (1-a), (1-b), (4-a), and (4-b) and
5 amending Subdivisions (3) and (5) to read as follows:

6 (1-a) "Consumer" means a resident of or an individual
7 receiving services from a facility covered by this chapter.

8 (1-b) "Consumer-directed service option" has the
9 meaning assigned by Section 531.051, Government Code.

10 (3) "Employee" means a person who:

11 (A) works at a facility or for an individual
12 employer;

13 (B) is an individual who provides personal care
14 services, active treatment, or any other personal services to a
15 ~~[resident or]~~ consumer or to an individual using the
16 consumer-directed service option [of the facility]; and

17 (C) is not licensed by an agency of the state to
18 perform the services the employee performs for the individual using
19 the consumer-directed service option or at the facility or is a
20 nurse aide employed by a facility.

21 (4-a) "Financial management services agency" means an
22 entity that contracts with the department to serve as a fiscal and
23 employer agent for an individual employer using the
24 consumer-directed service option.

25 (4-b) "Individual employer" means an individual or
26 legally authorized representative who participates in the
27 consumer-directed service option and is responsible for hiring

1 providers to deliver program services.

2 (5) "Reportable conduct" includes:

3 (A) abuse or neglect that causes or may cause
4 death or harm to an individual using the consumer-directed service
5 option or a [~~resident or~~] consumer [~~of a facility~~];

6 (B) sexual abuse of an individual using the
7 consumer-directed service option or a [~~resident or~~] consumer [~~of a~~
8 facility];

9 (C) financial exploitation of an individual
10 using the consumer-directed service option or a [~~resident or~~]
11 consumer [~~of a facility~~] in an amount of \$25 or more; and

12 (D) emotional, verbal, or psychological abuse
13 that causes harm to an individual using the consumer-directed
14 service option or a [~~resident or~~] consumer [~~of a facility~~].

15 SECTION 5. Section 253.002(b), Health and Safety Code, is
16 amended to read as follows:

17 (b) If the Department of Aging and Disability Services
18 receives a report that an employee of a facility licensed under
19 Chapter 252 or of an individual employer committed reportable
20 conduct, the department shall forward that report to the Department
21 of Family and Protective Services for investigation.

22 SECTION 6. Section 253.004, Health and Safety Code, is
23 amended by adding Subsection (a-1) to read as follows:

24 (a-1) The department must complete the hearing and the
25 hearing record not later than the 120th day after the date the
26 department receives a request for a hearing.

27 SECTION 7. Section 253.007(a), Health and Safety Code, is

1 amended to read as follows:

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

11 SECTION 8. Section 253.008, Health and Safety Code, is
12 amended to read as follows:

13 Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL
14 SEARCH. (a) Before a facility or individual employer as defined in
15 this chapter or an agency as defined in Section 48.401, Human
16 Resources Code, may hire an employee, the individual employer or a
17 financial management services agency on behalf of the individual
18 employer, the facility, or agency shall search the employee
19 misconduct registry under this chapter and the nurse aide registry
20 maintained under Chapter 250 as required by the Omnibus Budget
21 Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine
22 whether the applicant for employment is designated in either
23 registry as having abused, neglected, or exploited an individual
24 using the consumer-directed service option or a [resident or]
25 consumer [~~of a facility or agency or an individual receiving~~
26 ~~services from a facility or agency]~~.

27 (b) A facility, individual employer or financial management

1 services agency on behalf of an individual employer, or agency may
2 not employ a person who is listed in either registry as having
3 abused, neglected, or exploited an individual using the
4 consumer-directed service option or a [~~resident or~~] consumer [~~of a~~
5 ~~facility or agency or an individual receiving services from a~~
6 ~~facility or agency~~].

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

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

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

22 SECTION 9. Section 253.009(a), Health and Safety Code, is
23 amended to read as follows:

24 (a) Each facility or individual employer as defined in this
25 chapter and each agency as defined in Section 48.401, Human
26 Resources Code, shall notify its employees in a manner prescribed
27 by the Department of Aging and Disability Services:

1 (1) about the employee misconduct registry; and

2 (2) that an employee may not be employed if the
3 employee is listed in the registry.

4 SECTION 10. Section 48.401(3), Human Resources Code, is
5 amended to read as follows:

6 (3) "Employee" means a person who:

7 (A) works for:

8 (i) an agency; or

9 (ii) an individual employer participating
10 in the consumer-directed service option, as defined by Section
11 531.051, Government Code;

12 (B) provides personal care services, active
13 treatment, or any other personal services to an individual
14 receiving agency services, ~~or to~~ an individual who is a child for
15 whom an investigation is authorized under Section 261.404, Family
16 Code, or an individual receiving services through the
17 consumer-directed service option, as defined by Section 531.051,
18 Government Code; and

19 (C) is not licensed by the state to perform the
20 services the person performs for the agency or the individual
21 employer participating in the consumer-directed service option, as
22 defined by Section 531.051, Government Code.

23 SECTION 11. Section 250.003(c-1), Health and Safety Code,
24 is repealed.

25 SECTION 12. This Act takes effect January 1, 2014.

President of the Senate

Speaker of the House

I certify that H.B. No. 2683 was passed by the House on April 18, 2013, by the following vote: Yeas 143, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2683 on May 16, 2013, by the following vote: Yeas 142, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2683 was passed by the Senate, with amendments, on May 15, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor