

By: Price

H.B. No. 2683

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to employment in certain consumer-directed services and by  
3 certain facilities and to the nurse aide registry and the employee  
4 misconduct registry.

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

6 SECTION 1. Section 250.001, Health and Safety Code, is  
7 amended by adding Subdivisions (1-a) and (1-b) and amending  
8 Subdivisions (2) and (3-b) to read as follows:

9 (1-a) "Consumer" means a resident of or an individual  
10 receiving services from a facility covered by this chapter.

11 (1-b) "Consumer-directed service option" has the  
12 meaning assigned by Section 531.051, Government Code.

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

16 (3-b) "Individual employer" means an individual or  
17 legally authorized representative who participates in the  
18 consumer-directed service option [~~described by Section 531.051,~~  
19 ~~Government Code,~~] and is responsible for hiring service providers  
20 to deliver program services.

21 SECTION 2. Sections 250.003(a), (c), and (d), Health and  
22 Safety Code, are amended to read as follows:

23 (a) A facility or individual employer may not employ an  
24 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 employer using the consumer-directed service option ~~[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 employer's books and  
18 records [~~each employee's personnel file~~] a copy of the results of  
19 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 of Aging and Disability  
23 Services to serve as a fiscal and employer agent for an individual  
24 employer using the 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 employer, the address  
8 of the facility or employer, the date the reportable conduct  
9 occurred, and a description of the reportable conduct.

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

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

26 (b) A facility, individual employer or financial management  
27 services agency on behalf of an individual employer, or agency may



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

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

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

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

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

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

27 (1) about the employee misconduct registry; and

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

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

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