

House Bill 2683
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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) 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

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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 of]~~ consumer ~~[of a facility]~~ or an individual using the consumer-directed service option ~~[receiving services from a facility]~~; and

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

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

- (1) an offense under Chapter 19, Penal Code (criminal homicide);
- (2) an offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);
- (3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (indecentcy with a child);
- (4) an offense under Section 22.011, Penal Code (sexual assault);
- (5) an offense under Section 22.02, Penal Code (aggravated assault);
- (6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
- (7) an offense under Section 22.041, Penal Code (abandoning or endangering child);
- (8) an offense under Section 22.08, Penal Code (aiding suicide);
- (9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);
- (10) an offense under Section 25.08, Penal Code (sale or

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<p>purchase of a child);</p> <p>(11) an offense under Section 28.02, Penal Code (arson);</p> <p>(12) an offense under Section 29.02, Penal Code (robbery);</p> <p>(13) an offense under Section 29.03, Penal Code (aggravated robbery);</p> <p>(14) an offense under Section 21.08, Penal Code (indecent exposure);</p> <p>(15) an offense under Section 21.12, Penal Code (improper relationship between educator and student);</p> <p>(16) an offense under Section 21.15, Penal Code (improper photography or visual recording);</p> <p>(17) an offense under Section 22.05, Penal Code (deadly conduct);</p> <p>(18) an offense under Section 22.021, Penal Code (aggravated sexual assault);</p> <p>(19) an offense under Section 22.07, Penal Code (terroristic threat);</p> <p>(20) <u>an offense under Section 32.53, Penal Code (exploitation of a child, elderly individual, or disabled individual);</u></p> <p><u>(21)</u> an offense under Section 33.021, Penal Code (online solicitation of a minor);</p> <p><u>(22)</u> [(21)] an offense under Section 34.02, Penal Code (money laundering);</p> <p><u>(23)</u> [(22)] an offense under Section 35A.02, Penal Code (Medicaid fraud);</p> <p><u>(24)</u> [(23)] an offense under Section 36.06, Penal Code (obstruction or retaliation);</p> <p><u>(25)</u> [(24)] an offense under Section 42.09, Penal Code (cruelty to livestock animals), or under Section 42.092, Penal Code (cruelty to nonlivestock animals); or</p> <p><u>(26)</u> [(25)] a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an</p>		

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offense containing elements that are substantially similar to the elements of an offense listed by this subsection.		
<p>SECTION 4. Section 253.001, Health and Safety Code, is amended by adding Subdivisions (1-a), (1-b), (4-a), and (4-b) and amending Subdivisions (3) and (5) to read as follows:</p> <p><u>(1-a) "Consumer" means a resident of or an individual receiving services from a facility covered by this chapter.</u></p> <p><u>(1-b) "Consumer-directed service option" has the meaning assigned by Section 531.051, Government Code.</u></p> <p>(3) "Employee" means a person who:</p> <p>(A) works at a facility <u>or for an individual employer</u>;</p> <p>(B) is an individual who provides personal care services, active treatment, or any other personal services to a [resident or] <u>consumer or to an individual using the consumer-directed service option [of the facility]</u>; and</p> <p>(C) is not licensed by an agency of the state to perform the services the employee performs <u>for the individual using the consumer-directed service option or</u> at the facility or is a nurse aide employed by a facility.</p> <p><u>(4-a) "Financial management services agency" means an entity that contracts with the department to serve as a fiscal and employer agent for an individual employer using the consumer-directed service option.</u></p> <p><u>(4-b) "Individual employer" means an individual or legally authorized representative who participates in the consumer-directed service option and is responsible for hiring providers to deliver program services.</u></p> <p>(5) "Reportable conduct" includes:</p> <p>(A) abuse or neglect that causes or may cause death or harm to <u>an individual using the consumer-directed service option or</u></p>	<p>SECTION 4. Same as House version.</p>	

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<p>a [resident or] consumer [of a facility];</p> <p>(B) sexual abuse of <u>an individual using the consumer-directed service option</u> or a [resident or] consumer [of a facility];</p> <p>(C) financial exploitation of <u>an individual using the consumer-directed service option</u> or a [resident or] consumer [of a facility] in an amount of \$25 or more; and</p> <p>(D) emotional, verbal, or psychological abuse that causes harm to <u>an individual using the consumer-directed service option</u> or a [resident or] consumer [of a facility].</p>		
<p>SECTION 5. Section 253.002(b), Health and Safety Code, is amended to read as follows:</p> <p>(b) If the Department of Aging and Disability Services receives a report that an employee of a facility licensed under Chapter 252 <u>or of an individual employer</u> committed reportable conduct, the department shall forward that report to the Department of Family and Protective Services for investigation.</p>	<p>SECTION 5. Same as House version.</p>	
<p>SECTION 6. Section 253.004, Health and Safety Code, is amended by adding Subsection (a-1) to read as follows:</p> <p><u>(a-1) The department must complete the hearing and the hearing record not later than the 120th day after the date the department receives a request for a hearing.</u></p>	<p>SECTION 6. Same as House version.</p>	
<p>SECTION 7. Section 253.007(a), Health and Safety Code, is amended to read as follows:</p> <p>(a) The department shall establish an employee misconduct registry. If the department in accordance with this chapter</p>	<p>SECTION 7. Same as House version.</p>	

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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 individual employer, the address of the facility or individual 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 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

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~~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 individual 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 individual 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 to read as follows:
(a) Each facility or individual employer as defined in this chapter and each agency as defined in Section 48.401, Human Resources Code, shall notify its employees in a manner prescribed by the Department of Aging and Disability Services:
(1) about the employee misconduct registry; and
(2) that an employee may not be employed if the employee is listed in the registry.

No equivalent provision.

SECTION 9. Same as House version.

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

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(3) "Employee" means a person who:

(A) works for:

(i) an agency; or

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

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

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

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

SECTION 11. Same as House version.

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

SECTION 12. Same as House version.