

1-1 By: Schwertner S.B. No. 304  
1-2 (In the Senate - Filed January 15, 2015; February 2, 2015,  
1-3 read first time and referred to Committee on Health and Human  
1-4 Services; March 23, 2015, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 March 23, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 304 By: Schwertner

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to the abuse and neglect of residents of certain  
1-22 facilities.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. (a) It is the intent of the legislature that  
1-25 Section [242.061](#), Health and Safety Code, as amended by this  
1-26 section, establish a ceiling or maximum number of violations  
1-27 related to the abuse and neglect of a resident that a facility can  
1-28 commit before the Department of Aging and Disability Services is  
1-29 required to revoke the facility's license. The changes in law made  
1-30 by this section are not intended to limit or diminish the  
1-31 department's permissive authority to revoke a license under Chapter  
1-32 242, Health and Safety Code.

1-33 (b) Section [242.061](#), Health and Safety Code, is amended by  
1-34 amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3),  
1-35 and (e) to read as follows:

1-36 (a) In this section:

1-37 (1) "Abuse" has the meaning assigned by Section  
1-38 [260A.001](#).

1-39 (2) "Immediate threat to health and safety" means a  
1-40 situation in which immediate corrective action is necessary because  
1-41 the facility's noncompliance with one or more requirements has  
1-42 caused, or is likely to cause, serious injury, harm, impairment, or  
1-43 death to a resident.

1-44 (3) "Neglect" has the meaning assigned by Section  
1-45 [260A.001](#).

1-46 (a-1) The department, after providing notice and  
1-47 opportunity for a hearing to the applicant or license holder, may  
1-48 deny, suspend, or revoke a license if the department finds that the  
1-49 applicant, the license holder, or any other person described by  
1-50 Section [242.032](#)(d) has:

1-51 (1) violated this chapter or a rule, standard, or  
1-52 order adopted or license issued under this chapter in either a  
1-53 repeated or substantial manner;

1-54 (2) committed any act described by Sections  
1-55 [242.066](#)(a)(2)-(6); or

1-56 (3) failed to comply with Section [242.074](#).

1-57 (a-2) Except as provided by Subsection (a-3) or (e), the  
1-58 department shall revoke a license under Subsection (a-1) if the  
1-59 department finds that:

1-60 (1) the license holder has committed three violations

2-1 described by Subsection (a-1), within a 24-month period, that  
2-2 constitute an immediate threat to health and safety related to the  
2-3 abuse or neglect of a resident; and  
2-4 (2) each of the violations described by Subdivision  
2-5 (1) are reported in connection with separate surveys, inspections,  
2-6 or investigation visits.  
2-7 (a-3) The department may not revoke a license under  
2-8 Subsection (a-2) due to a violation described by Subsection  
2-9 (a-2)(1), if:  
2-10 (1) the violation is not included on the written list  
2-11 of violations left with the facility at the time of the initial exit  
2-12 conference under Section 242.0445(b) for a survey, inspection, or  
2-13 investigation;  
2-14 (2) the violation is not included on the final  
2-15 statement of violations described by Section 242.0445; or  
2-16 (3) the violation has been reviewed under the informal  
2-17 dispute resolution process established by Section 531.058,  
2-18 Government Code, and a determination was made that:  
2-19 (A) the violation should be removed from the  
2-20 license holder's record; or  
2-21 (B) the violation is reduced in severity so that  
2-22 the violation is no longer cited as an immediate threat to health  
2-23 and safety related to the abuse or neglect of a resident.  
2-24 (e) The executive commissioner may waive a license  
2-25 revocation required by Subsection (a-2) if the executive  
2-26 commissioner determines that the waiver would not jeopardize the  
2-27 health and safety of the residents of the facility or place the  
2-28 residents at risk of abuse or neglect. The executive commissioner  
2-29 by rule shall establish criteria under which a waiver may be granted  
2-30 as provided by this subsection. The executive commissioner may  
2-31 provide a waiver for a veterans home, as defined by Section 164.002,  
2-32 Natural Resources Code, if the Veterans' Land Board contracts with  
2-33 a different entity to operate the veterans home than the entity that  
2-34 operated the home during the period in which the violations  
2-35 described by Subsection (a-2) occurred.  
2-36 SECTION 2. Section 242.0615(a), Health and Safety Code, is  
2-37 amended to read as follows:  
2-38 (a) The department, after providing notice and opportunity  
2-39 for a hearing, may exclude a person from eligibility for a license  
2-40 under this chapter if the person or any person described by Section  
2-41 242.032(d) has substantially failed to comply with this chapter and  
2-42 the rules adopted under this chapter. The authority granted by this  
2-43 subsection is in addition to the authority to deny issuance of a  
2-44 license under Section 242.061(a-1) [242.061(a)].  
2-45 SECTION 3. Section 255.003, Health and Safety Code, is  
2-46 amended by amending Subsections (b), (e), and (j) and adding  
2-47 Subsections (b-1) and (i-1) to read as follows:  
2-48 (b) ~~Monitoring~~ [Priority for monitoring] visits shall be  
2-49 given to long-term care facilities:  
2-50 (1) with a history of patient care deficiencies; or  
2-51 (2) that are identified as medium risk through the  
2-52 department's early warning system.  
2-53 (b-1) A long-term care facility may request a monitoring  
2-54 visit under this section.  
2-55 (e) Quality-of-care monitors shall assess:  
2-56 (1) the overall quality of life in the long-term care  
2-57 facility; and  
2-58 (2) specific conditions in the facility directly  
2-59 related to patient care, including conditions identified through  
2-60 the long-term care facility's quality measure reports based on  
2-61 Minimum Data Set Resident Assessments.  
2-62 (i-1) The department shall schedule a follow-up visit not  
2-63 later than the 45th day after the date of an initial monitoring  
2-64 visit conducted under this section.  
2-65 (j) Conditions observed by the quality-of-care monitor that  
2-66 create an immediate threat to the health or safety of a resident  
2-67 shall be reported immediately to the long-term care facility  
2-68 administrator, to the regional office supervisor for appropriate  
2-69 action and, as appropriate or as required by law, to law

3-1 enforcement, adult protective services, other divisions of the  
3-2 department, or other responsible agencies.

3-3 SECTION 4. Section 255.004, Health and Safety Code, is  
3-4 amended by amending Subsection (a) and adding Subsections (a-1) and  
3-5 (a-2) to read as follows:

3-6 (a) In this section:

3-7 (1) "Abuse" has the meaning assigned by Section  
3-8 260A.001.

3-9 (2) "Immediate threat to health and safety" means a  
3-10 situation in which immediate corrective action is necessary because  
3-11 the facility's noncompliance with one or more requirements has  
3-12 caused, or is likely to cause, serious injury, harm, impairment, or  
3-13 death to a resident.

3-14 (3) "Neglect" has the meaning assigned by Section  
3-15 260A.001.

3-16 (a-1) The department shall create rapid response teams  
3-17 composed of health care experts that can visit a long-term care  
3-18 facility that:

3-19 (1) is [facilities] identified as high risk through  
3-20 the department's early warning system; or

3-21 (2) if the long-term care facility is a nursing  
3-22 institution, has committed three violations described by Section  
3-23 242.061(a-1), within a 24-month period, that constitute an  
3-24 immediate threat to health and safety related to the abuse or  
3-25 neglect of a resident.

3-26 (a-2) A long-term care facility shall cooperate with a rapid  
3-27 response team deployed under this section to improve the quality of  
3-28 care provided at the facility.

3-29 SECTION 5. Section 531.058, Government Code, is amended by  
3-30 adding Subsection (a-1) to read as follows:

3-31 (a-1) As part of the informal dispute resolution process  
3-32 established under this section, the commission shall contract with  
3-33 an appropriate disinterested person who is a nonprofit organization  
3-34 to adjudicate disputes between an institution or facility licensed  
3-35 under Chapter 242, Health and Safety Code, and the Department of  
3-36 Aging and Disability Services concerning a statement of violations  
3-37 prepared by the department in connection with a survey conducted by  
3-38 the department of the institution or facility. Section 2009.053  
3-39 does not apply to the selection of an appropriate disinterested  
3-40 person under this subsection. The person with whom the commission  
3-41 contracts shall adjudicate all disputes described by this  
3-42 subsection.

3-43 SECTION 6. (a) As soon as possible after the effective  
3-44 date of this Act, the Department of Aging and Disability Services or  
3-45 the Health and Human Services Commission, as appropriate, shall  
3-46 apply for any waiver or other authorization from a federal agency  
3-47 that is necessary to implement this Act. The department and  
3-48 commission may delay implementing this Act until the waiver or  
3-49 authorization is granted.

3-50 (b) As soon as practicable after the effective date of this  
3-51 Act:

3-52 (1) the executive commissioner of the Health and Human  
3-53 Services Commission shall adopt the rules necessary to implement  
3-54 Section 531.058(a-1), Government Code, as added by this Act; and

3-55 (2) the Department of Aging and Disability Services  
3-56 and the Health and Human Services Commission shall, as appropriate,  
3-57 revise or enter into a memorandum of understanding as required by a  
3-58 federal agency that is necessary to implement Section 531.058(a-1),  
3-59 Government Code, as added by this Act.

3-60 SECTION 7. Sections 242.061(a-2) and (a-3), Health and  
3-61 Safety Code, as added by this Act, apply only to a violation  
3-62 committed on or after September 1, 2016. A violation committed  
3-63 before September 1, 2016, is governed by the law in effect on the  
3-64 date the violation was committed, and the former law is continued in  
3-65 effect for that purpose. For purposes of this section, a violation  
3-66 was committed before September 1, 2016, if any element of the  
3-67 violation occurred before that date.

3-68 SECTION 8. (a) Except as provided by Subsection (b) of  
3-69 this section, this Act takes effect immediately if it receives a

4-1 vote of two-thirds of all the members elected to each house, as  
4-2 provided by Section 39, Article III, Texas Constitution. If this  
4-3 Act does not receive the vote necessary for immediate effect, this  
4-4 Act takes effect September 1, 2015.

4-5 (b) Sections 242.061(a-2) and (a-3), Health and Safety  
4-6 Code, as added by this Act, take effect September 1, 2016.

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