

By: Patterson

H.B. No. 3144

A BILL TO BE ENTITLED

AN ACT

relating to registration requirements and voluntary safety standards certification for senior living facilities; authorizing administrative penalties; imposing fees; requiring an occupational registration.

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

SECTION 1. Subtitle B, Title 4, Health and Safety Code, is amended by adding Chapter 260B to read as follows:

CHAPTER 260B. SENIOR LIVING FACILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 260B.001. PURPOSE. The purpose of this chapter is to:

(1) register senior living facilities in this state;

(2) create a voluntary safety standards certification program for those facilities; and

(3) provide easily accessible information to current and prospective residents of a senior living facility on the safety certification status of that facility.

Sec. 260B.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Health and Human Services Commission.

(2) "Common amenity" means an amenity or service offered or provided to residents of a multiunit residential property, including:

(A) a fitness center;

- 1 (B) concierge services;
- 2 (C) a library;
- 3 (D) common dining services;
- 4 (E) housekeeping services; and
- 5 (F) full-time security.

6 (3) "Executive commissioner" means the executive
7 commissioner of the Health and Human Services Commission.

8 (4) "Resident" means an individual who resides in a
9 senior living facility under a lease or residential agreement as a
10 unit owner or tenant.

11 (5) "Senior living facility" means a residential
12 facility or a portion of a residential facility that:

- 13 (A) is managed by a single entity;
- 14 (B) generally requires a resident to be 55 years
15 of age or older;
- 16 (C) contains not fewer than 20 residential units
17 in one or more multiunit buildings that are available to rent,
18 lease, or own;
- 19 (D) is located on a single lot or tract of land or
20 on multiple contiguous lots or tracts of land; and
- 21 (E) provides common amenities.

22 (6) "Unit" means a physical portion of a residential
23 property designated for separate ownership or occupancy.

24 Sec. 260B.003. EXEMPTIONS. This chapter does not apply to:

- 25 (1) a nursing facility licensed under Chapter 242;
- 26 (2) an assisted living facility licensed under Chapter

27 247;

1 (3) an intermediate care facility licensed under
2 Chapter 252;

3 (4) a boarding home facility as defined by Section
4 260.001 that holds a permit issued as provided by Chapter 260;

5 (5) a supportive housing facility for elderly
6 individuals operated in accordance with Section 202, Housing Act of
7 1959 (12 U.S.C. Section 1701q);

8 (6) a center for independent living as defined by
9 Section 702 of the federal Rehabilitation Act of 1973 (29 U.S.C.
10 Section 796a);

11 (7) a condominium as defined by Section 82.003,
12 Property Code; or

13 (8) a facility other than a senior living facility or a
14 facility described by this section that is regulated by the
15 commission or in accordance with rules adopted by the Centers for
16 Medicare and Medicaid Services.

17 Sec. 260B.004. REGISTRY. The commission shall establish
18 and maintain a registry that contains information on each senior
19 living facility registered with the commission, including whether
20 the facility holds a safety standards certification issued under
21 Subchapter C. The information must be publicly accessible through
22 a web page on the commission's Internet website.

23 Sec. 260B.005. RULES. The executive commissioner shall
24 adopt rules necessary to implement this chapter.

25 Sec. 260B.006. COST SAVINGS. To reduce the fiscal impact of
26 implementing this chapter, the commission may:

27 (1) use information provided by a local governmental

1 entity or law enforcement agency in making decisions under this
2 chapter; and

3 (2) unless the commission suspects a senior living
4 facility is violating the safety standards developed under Section
5 260B.103, process a recertification request for a safety standards
6 certification issued under Subchapter C by conducting a partial or
7 full desk review to evaluate the recertification request.

8 SUBCHAPTER B. REGISTRATION AND DISCLOSURE REQUIREMENTS

9 Sec. 260B.051. REGISTRATION REQUIRED. (a) An entity may
10 not establish or operate a senior living facility unless the entity
11 registers with the commission in accordance with this subchapter.

12 (b) The executive commissioner by rule shall establish
13 procedures for registering an entity to establish or operate a
14 senior living facility, but may only establish registration
15 requirements as necessary to implement this chapter.

16 (c) The executive commissioner by rule may require an entity
17 to periodically renew a registration under this section, but may
18 not revoke an entity's registration unless the entity no longer
19 operates the senior living facility.

20 Sec. 260B.052. REGISTRATION AND RENEWAL FEES. (a) The
21 executive commissioner by rule shall set registration and renewal
22 fees in amounts:

23 (1) reasonable and necessary to cover the costs of
24 administering this chapter; and

25 (2) as appropriate, based on the number of units in the
26 senior living facility.

27 (b) All fees collected under this section are

1 nonrefundable.

2 Sec. 260B.053. DISCLOSURE OF CERTIFICATION. (a) A senior
3 living facility shall provide to each resident at the time the
4 facility provides the initial facility lease or residential
5 contract to the resident a written statement on whether the
6 facility holds a safety standards certification issued under
7 Subchapter C. The resident must sign and acknowledge the
8 statement.

9 (b) The executive commissioner by rule may prescribe the
10 format of the written statement.

11 SUBCHAPTER C. SAFETY STANDARDS CERTIFICATION PROGRAM

12 Sec. 260B.101. VOLUNTARY SAFETY STANDARDS CERTIFICATION
13 PROGRAM. (a) The commission shall develop and implement a
14 voluntary safety standards certification program to certify a
15 senior living facility that meets safety standards established by
16 commission rule.

17 (b) The executive commissioner shall adopt rules to
18 prescribe procedures governing:

19 (1) the issuance and maintenance of a safety standards
20 certification; and

21 (2) inspections of a senior living facility that holds
22 a safety standards certification to ensure the facility continues
23 to meet the safety standards required for certification.

24 Sec. 260B.102. CERTIFICATION FEES. (a) The executive
25 commissioner by rule shall set fees for issuing safety standards
26 certifications under this subchapter, including application,
27 inspection, certification, and renewal fees. The fees must be in

1 amounts:

2 (1) reasonable and necessary to cover the costs of
3 administering this chapter; and

4 (2) as appropriate, based on the number of units in a
5 senior living facility.

6 (b) All fees collected under this section are
7 nonrefundable.

8 Sec. 260B.103. SAFETY STANDARDS FOR CERTIFICATION. (a)

9 The executive commissioner shall develop and publish on the
10 commission's Internet website and in the Texas Register safety
11 standards for certification of a senior living facility under this
12 subchapter. The standards must address:

13 (1) the basic housing conditions of a facility to
14 ensure each resident's health, safety, comfort, and protection from
15 fire hazard;

16 (2) sanitary conditions in common areas of a facility
17 to ensure each resident's health, safety, and comfort;

18 (3) the appropriate handling and regular reporting to
19 residents of injuries, crimes, and unusual accidents and the
20 establishment of related policies and procedures necessary to
21 ensure the health and safety of each resident;

22 (4) policies and procedures for natural disasters,
23 infectious disease outbreaks, and other extreme risks;

24 (5) policies and procedures for registering facility
25 visitors to protect the safety of each resident;

26 (6) criminal history record checks of facility
27 personnel conducted by the facility and records of those checks;

1 and

2 (7) the rights of each resident to:

3 (A) speak with law enforcement officials and
4 report instances of criminal conduct to the officials without
5 obstruction or retaliation from the facility or facility personnel;
6 and

7 (B) execute the resident's advance directive or a
8 testamentary document without any influence from facility
9 personnel unless the facility is authorized under the resident's
10 durable medical power of attorney.

11 (b) In developing safety standards under Subsection (a),
12 the executive commissioner:

13 (1) may exempt from certain standards or develop
14 separate standards for a senior living facility with residents who
15 are primarily low income, that is located in a rural area, or that
16 is otherwise unable to meet the standards due to unique
17 circumstances, as determined by the executive commissioner;

18 (2) shall develop standards and evaluate the physical
19 condition of a facility based on the facility's compliance with
20 applicable local building codes;

21 (3) shall avoid creating cost burdens that may
22 disincentivize a facility from seeking a safety standards
23 certification; and

24 (4) shall ensure the standards preserve the
25 independence, privacy, and autonomy of residents.

26 Sec. 260B.104. INSPECTIONS; ISSUANCE; STATEMENT OF
27 IMPROVEMENTS. (a) The commission shall inspect each senior living

1 facility that submits a request to the commission for certification
2 under this subchapter to determine whether the facility meets the
3 safety standards for certification developed under Section
4 260B.103 and may inspect the facility at other reasonable times as
5 necessary to ensure compliance with this subchapter.

6 (b) The commission shall issue a safety standards
7 certification to each senior living facility that applies for and
8 meets the safety standards for certification.

9 (c) The commission shall issue a written statement
10 describing the improvements necessary for obtaining a safety
11 standards certification to a senior living facility that:

12 (1) requests an inspection under this section and that
13 the commission determines does not meet the safety standards for
14 certification;

15 (2) holds a certification but is at risk of having the
16 certification suspended or revoked in accordance with Section
17 260B.153; or

18 (3) has had its certification suspended or revoked for
19 a violation of this chapter.

20 Sec. 260B.105. CERTIFICATION SEAL. The commission shall
21 design a certification seal that visually indicates a senior living
22 facility has met voluntary state safety standards and shall
23 authorize a facility that holds a safety standards certification to
24 use the seal in the facility's advertising and marketing materials.

25 SUBCHAPTER D. GENERAL ENFORCEMENT

26 Sec. 260B.151. COMPLAINTS. The executive commissioner by
27 rule shall develop and implement procedures for receiving and

1 processing complaints of an alleged violation of this chapter. In
2 developing and implementing the procedures, the executive
3 commissioner shall ensure the identity of the complainant is kept
4 confidential.

5 Sec. 260B.152. INFORMAL DISPUTE RESOLUTION; COLLECTION OF
6 UNPAID FEES. (a) The executive commissioner by rule shall
7 establish an informal dispute resolution process to address a
8 dispute between a senior living facility and the commission
9 concerning:

10 (1) unpaid fees or penalties; and

11 (2) for a facility with a safety standards
12 certification issued under Subchapter C that is in violation of one
13 or more of the safety standards developed under Section 260B.103, a
14 statement of the safety standards violations prepared by the
15 commission in accordance with this section.

16 (b) The informal dispute resolution process established by
17 the executive commissioner under this section must require that:

18 (1) a senior living facility request informal dispute
19 resolution not later than the 10th day following the date on which
20 the commission notifies the facility of the unpaid fees or
21 penalties or safety standards violations;

22 (2) the process be completed not later than the 90th
23 day following the date on which the commission receives from a
24 senior living facility a request for informal dispute resolution;

25 (3) not later than the 20th business day following the
26 date on which a senior living facility requests informal dispute
27 resolution, the commission provide to the facility a copy of all

1 information referenced in the dispute, including any notes taken or
2 e-mails or messages sent by a commission employee involved with
3 registering or issuing a safety standards certification to the
4 facility, as applicable, and excluding:

5 (A) the name of any complainant, witness, or
6 informant, which must be redacted from information provided to the
7 facility;

8 (B) any information that would reasonably lead to
9 the identification of a complainant, witness, or informant, which
10 must be redacted from information provided to the facility;

11 (C) information obtained from or contained in the
12 records of the facility;

13 (D) information that is publicly available; or

14 (E) information that is confidential by law;

15 (4) during the process, full consideration be given to
16 all factual arguments raised and information provided by the senior
17 living facility or commission;

18 (5) ex parte communications concerning the substance
19 of any argument relating to the unpaid fees or safety standards
20 violations under consideration not occur between the informal
21 dispute resolution staff and the senior living facility or
22 commission;

23 (6) the senior living facility and commission be given
24 a reasonable opportunity to submit arguments and information
25 supporting the position of the facility or commission and to
26 respond to arguments and information presented against the other,
27 provided that the facility submits arguments and supporting

1 information not later than the 10th business day following the date
2 on which the facility receives the information described by
3 Subdivision (3); and

4 (7) the commission bear the burden of proving the
5 unpaid fees or penalties or safety standards violations.

6 (c) The commission may not delegate the commission's
7 responsibility to administer the informal dispute resolution
8 process established by this section to another state agency.

9 (d) A senior living facility that requests an informal
10 dispute resolution under this section must reimburse the commission
11 for any costs associated with the commission's preparation,
12 copying, and delivery of information requested by the facility.

13 (e) A statement of safety standards violations prepared by
14 the commission is confidential pending the outcome of the informal
15 dispute resolution process. Information concerning the outcome of
16 an inspection may be posted on any Internet website maintained by
17 the commission while the dispute is pending if the posting clearly
18 notes each finding that is in dispute.

19 (f) The commission may charge and the senior living facility
20 shall pay the reasonable costs associated with making the
21 redactions required by Subsections (b)(3)(A) and (B).

22 (g) For a senior living facility that does not request
23 informal dispute resolution under this section for unpaid
24 registration or certification fees, the commission may request the
25 attorney general to institute an action to collect the unpaid fees
26 and any accrued interest on those fees.

27 Sec. 260B.153. SUSPENSION OR REVOCATION OF SAFETY STANDARDS

1 CERTIFICATION. (a) The commission, after providing notice and
2 opportunity for a hearing to the senior living facility, may
3 suspend or revoke a safety standards certification issued under
4 Subchapter C if the commission determines the facility violated
5 this chapter or a rule or standard adopted under this chapter in a
6 substantial manner or more than once.

7 (b) The suspension or revocation of a safety standards
8 certification by the commission under this section and the appeal
9 from that action are governed by the procedures for a contested case
10 hearing under Chapter 2001, Government Code.

11 (c) The safety standards certification of a senior living
12 facility issued under Subchapter C is preserved until final
13 disposition of a contested matter under this section.

14 (d) A court of competent jurisdiction may not order
15 arbitration, whether on motion of any party or on the court's own
16 motion, to resolve a dispute involving the suspension or revocation
17 of a safety standards certification issued under Subchapter C or
18 the conduct with respect to which the suspension or revocation is
19 sought.

20 Sec. 260B.154. ADMINISTRATIVE PENALTY. (a) The commission
21 may assess an administrative penalty against a senior living
22 facility that:

23 (1) fails to register with the commission under
24 Section 260B.051 in a timely manner, as determined by commission
25 rule;

26 (2) fails to disclose whether the facility holds a
27 safety standards certification as required by Section 260B.053;

1 (3) knowingly makes a false statement of a material
2 fact:

3 (A) on an application for registration,
4 registration renewal, certification, or recertification or on
5 another document provided to the commission; or

6 (B) with respect to a matter under investigation
7 by the commission;

8 (4) misrepresents to a resident or prospective
9 resident, including through the use of the certification seal
10 designed by the commission under Section 260B.105, that the
11 facility holds a safety standards certification issued under
12 Subchapter C;

13 (5) applies for a safety standards certification under
14 Subchapter C but does not allow the commission or a representative
15 of the commission to conduct any necessary inspection of the
16 facility's records or premises;

17 (6) wilfully interferes with the work of the
18 commission or a representative of the commission in implementing or
19 enforcing this chapter or a rule adopted under this chapter; or

20 (7) fails to pay a penalty assessed against the
21 facility not later than the 30th day after the date the assessment
22 of the penalty becomes final.

23 (b) A penalty assessed against a senior living facility
24 under this section may not exceed \$1,000 for each violation.

25 (c) The executive commissioner by rule shall establish
26 gradations of penalties under this section based on:

27 (1) the seriousness of a violation;

1 (2) the history of previous violations;
2 (3) efforts to correct a violation; and
3 (4) the size of a senior living facility and the entity
4 that registers the facility under this chapter.

5 (d) The commission may waive all or part of a penalty
6 assessed against a senior living facility under this section if the
7 commission determines the violation was the result of a good faith
8 mistake.

9 (e) A penalty assessed against a senior living facility
10 under Subsection (a)(7) is in addition to the previously assessed
11 penalty.

12 (f) A penalty collected under this section shall be
13 deposited in the state treasury to the credit of the general revenue
14 fund.

15 SECTION 2. (a) As soon as practicable after the effective
16 date of this Act, the executive commissioner of the Health and Human
17 Services Commission shall adopt rules necessary to implement
18 Chapter 260B, Health and Safety Code, as added by this Act.

19 (b) Notwithstanding Chapter 260B, Health and Safety Code,
20 as added by this Act, a senior living facility existing on the
21 effective date of this Act is not required to register under that
22 chapter before September 1, 2022.

23 SECTION 3. This Act takes effect September 1, 2021.