

By: Nelson

S. B. No. 785

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the employee misconduct registry and employee
3 certification posting requirements for certain facilities.

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

5 SECTION 1. Section 242.042(a), Health and Safety Code, is
6 amended to read as follows:

7 (a) Each institution shall prominently and conspicuously
8 post for display in a public area of the institution that is readily
9 available to residents, employees, and visitors:

10 (1) the license issued under this chapter;

11 (2) a sign prescribed by the department that specifies
12 complaint procedures established under this chapter or rules
13 adopted under this chapter and that specifies how complaints may be
14 registered with the department;

15 (3) a notice in a form prescribed by the department
16 stating that licensing inspection reports and other related reports
17 which show deficiencies cited by the department are available at
18 the institution for public inspection and providing the
19 department's toll-free telephone number that may be used to obtain
20 information concerning the institution:

21 (4) a concise summary of the most recent inspection
22 report relating to the institution;

23 (5) notice that the department can provide summary
24 reports relating to the quality of care, recent investigations,

1 litigation, and other aspects of the operation of the institution;
2 (6) notice that the Texas Board of Nursing Facility
3 Administrators can provide information about the nursing facility
4 administrator;

5 (7) any notice or written statement required to be
6 posted under Section 242.072(c);

7 (8) notice that informational materials relating to
8 the compliance history of the institution are available for
9 inspection at a location in the institution specified by the sign;
10 [and]

11 (9) notice that employees, other staff, residents,
12 volunteers, and family members and guardians of residents are
13 protected from discrimination or retaliation as provided by
14 Sections 242.133 and 242.1335; and

15 (10) a copy of the registration issued by the
16 department for each certified nurse aide employed by or working at
17 the facility.

18 SECTION 2. Section 253.001, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 253.001. DEFINITIONS. In this chapter:

21 (1) "Commissioner" means the commissioner of aging and
22 disability [human] services or the commissioner of the health and
23 human services agency that regulates a facility, as applicable.

24 (2) "Department" means the health and human services
25 agency that regulates, operates, contracts with, or oversees a
26 facility, as applicable [Texas Department of Human Services].

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

- 1 (A) works at a facility;
- 2 (B) is an individual who provides personal care
- 3 services, active treatment, or any other personal services to a
- 4 resident or consumer of the facility; and

5 (C) is not licensed by an agency of the state to
6 perform the services the employee performs at the facility or is [+]
7 and

8 [(D) is not] a nurse aide employed by a [nursing]
9 facility.

10 (4) "Executive commissioner" means the executive
11 commissioner of the Health and Human Services Commission.

12 (5) "Facility" means:

13 (A) a facility licensed by the Department of
14 Aging and Disability Services, including a nursing home, custodial
15 care home, or other institution licensed under Chapter 242 or an
16 assisted living facility licensed under Chapter 247 [department];

17 (B) an adult foster care provider that contracts
18 with the Department of Aging and Disability Services [redacted];

19 [OK]

20 (C) a home and community support services agency
21 licensed [by the department] under Chapter 142;

1 State Health Services;

2 (G) a local mental health or mental retardation

3 authority designated under Section 533.035;

4 (H) a person exempt from licensing under Section

5 142.003(a)(19);

6 (I) a state school as defined by Section 531.002;

7 or

8 (J) a state hospital.

9 (6) "Health and human services agency" has the meaning

10 assigned by Section 531.001, Government Code.

11 (7) [(-5)] "Reportable conduct" includes:

12 (A) abuse or neglect that causes or may cause
13 death or harm to a resident or consumer of a facility;

14 (B) sexual abuse of a resident or consumer of a
15 facility;

16 (C) financial exploitation of a resident or
17 consumer of a facility in an amount of \$25 or more; and

18 (D) emotional, verbal, or psychological abuse
19 that causes harm to a resident or consumer of a facility.

20 SECTION 3. Section 253.002, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 253.002. INVESTIGATION BY DEPARTMENT. If the
23 department that regulates a facility receives a report that an
24 employee of the [a] facility committed reportable conduct, the
25 department shall investigate the report to determine whether the
26 employee has committed the reportable conduct.

27 SECTION 4. The heading to Section 253.003, Health and

1 Safety Code, is amended to read as follows:

2 Sec. 253.003. DETERMINATION; NOTICE; REPORT TO REGISTRY.

3 SECTION 5. Section 253.003, Health and Safety Code, is
4 amended by amending Subsections (a) and (c) and adding Subsection
5 (d) to read as follows:

6 (a) If, after an investigation, the department determines
7 that the reportable conduct occurred, the department shall:

8 (1) give written notice of the department's findings
9 that [~~. The notice~~] must include:

10 (A) [~~(1)~~] a brief summary of the department's
11 findings; and

12 (B) [~~(2)~~] a statement of the person's right to a
13 hearing on the occurrence of the reportable conduct; and

14 (2) immediately forward a record of the reportable
15 conduct to the Department of Aging and Disability Services for
16 inclusion in the registry under Section 253.007 with a notation
17 that the finding is pending a final determination.

18 (c) If the employee notified of the violation accepts the
19 determination of the department or fails to timely respond to the
20 notice, the commissioner or the commissioner's designee shall:

21 (1) issue an order approving the determination and
22 ordering that the reportable conduct be recorded in the registry
23 under Section 253.007; and

24 (2) immediately forward the record of the reportable
25 conduct to the Department of Aging and Disability Services for
26 inclusion of the final determination in the registry under Section
27 253.007.

1 (d) Notwithstanding any other provision of this subchapter,
2 a department that regulates a facility and that is subject to
3 Subchapter I, Chapter 48, Human Resources Code, shall comply with
4 the procedures established under that subchapter in submitting a
5 record of reportable conduct to the Department of Aging and
6 Disability Services.

7 SECTION 6. Section 253.004, Health and Safety Code, is
8 amended by amending Subsection (c) and adding Subsection (d) to
9 read as follows:

10 (c) Based on the findings of fact and conclusions of law and
11 the recommendations of the hearings examiner, the commissioner or
12 the commissioner's designee by order may find that the reportable
13 conduct has occurred. If the commissioner or the commissioner's
14 designee finds that the reportable conduct has occurred, the
15 commissioner or the commissioner's designee shall:

16 (1) issue an order approving the determination; and
17 (2) forward the record of reportable conduct to the
18 Department of Aging and Disability Services for inclusion of the
19 final determination in the registry under Section 253.007.

20 (d) If the commissioner or the commissioner's designee
21 finds that the reportable conduct has not occurred based on the
22 findings of fact and conclusions of law and the recommendations of
23 the hearings examiner, the commissioner or the commissioner's
24 designee shall:

25 (1) issue an order rejecting the determination; and
26 (2) immediately notify the Department of Aging and
27 Disability Services to remove the record of the reportable conduct

1 from the registry maintained under Section 253.007.

2 SECTION 7. Sections 253.005(a), (b), and (d), Health and
3 Safety Code, are amended to read as follows:

4 (a) The department that regulates a facility shall give
5 notice of the order under Section 253.004 to the employee alleged to
6 have committed the reportable conduct. The notice must include:

7 (1) separate statements of the findings of fact and
8 conclusions of law;

9 (2) a statement of the right of the employee to
10 judicial review of the order; and

11 (3) a statement that the final determination of the
12 reportable conduct has been ~~[will be]~~ recorded in the registry
13 under Section 253.007 and will be retained in the registry if:

14 (A) the employee does not request judicial review
15 of the determination; or

16 (B) the determination is sustained by the court.

17 (b) Not later than the 30th day after the date on which the
18 decision becomes final as provided by Chapter 2001, Government
19 Code, the employee may file a petition for judicial review
20 contesting the finding of the reportable conduct. If the employee
21 does not request judicial review of the determination, the
22 ~~[department shall]~~ record of the final determination of the
23 reportable conduct shall be retained in the registry under Section
24 253.007.

25 (d) If the court sustains the finding of the occurrence of
26 the reportable conduct, the department that regulates the facility
27 shall notify the Department of Aging and Disability Services, and

1 the Department of Aging and Disability Services shall note that the
2 court sustained the final determination of [record] the reportable
3 conduct in the registry under Section 253.007. If the court
4 overturns the finding of the occurrence of the reportable conduct,
5 the department that regulates the facility shall immediately notify
6 the Department of Aging and Disability Services, and the Department
7 of Aging and Disability Services shall immediately remove the
8 record of the reportable conduct from the registry under Section
9 253.007.

10 SECTION 8. Section 253.006, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 253.006. INFORMAL PROCEEDINGS. The executive
13 commissioner [department] by rule shall adopt procedures governing
14 informal proceedings held in compliance with Section 2001.056,
15 Government Code.

16 SECTION 9. Section 253.007, Health and Safety Code, is
17 amended to read as follows:

18 Sec. 253.007. EMPLOYEE MISCONDUCT REGISTRY. (a) The
19 Department of Aging and Disability Services shall establish an
20 employee misconduct registry.

21 (b) If the department that regulates a facility finds after
22 an investigation and notification to the employee of the
23 determination and of the right to a hearing that an employee of a
24 facility has committed [commits] reportable conduct, the
25 department shall make a record of the employee's name, the
26 employee's address, the employee's social security number, the name
27 of the facility, the address of the facility, the date the

1 reportable conduct occurred, and a description of the reportable
2 conduct. The department shall immediately forward the finding and
3 record to the Department of Aging and Disability Services, and the
4 Department of Aging and Disability Services shall immediately
5 include the finding and record in the employee misconduct registry
6 with a notation that the finding is pending a final determination.

7 (c) If the department that regulates a facility makes a
8 final determination after an opportunity for a hearing that an
9 employee of a facility has committed reportable conduct, the
10 department shall immediately forward the final determination and
11 record to the Department of Aging and Disability Services.

12 (d) If the Department of Aging and Disability Services
13 receives notification of a final determination from a department
14 that regulates a facility or of action of a court under Section
15 253.004, the Department of Aging and Disability Services, as
16 appropriate, shall immediately:

17 (1) include in the registry information related to the
18 final determination of reportable misconduct; or

19 (2) remove from the registry any notation of employee
20 misconduct if it is finally determined by the department that
21 regulates a facility or a court that reportable conduct did not
22 occur.

23 (e) [b] If an agency of another state or the federal
24 government finds that an employee has committed an act that
25 constitutes reportable conduct, the Department of Aging and
26 Disability Services [department] may make a record in the employee
27 misconduct registry of the employee's name, the employee's address,

1 the employee's social security number, the name of the facility,
2 the address of the facility, the date of the act, and a description
3 of the act.

4 (f) [~~(e)~~] The Department of Aging and Disability Services
5 [~~department~~] shall make the registry available to the public.

6 SECTION 10. Section 253.0075, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 253.0075. RECORDING CERTAIN REPORTABLE CONDUCT
9 [~~REPORTED BY DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES~~]. On
10 receipt of a finding of an employee's reportable conduct by the
11 Department of Family and Protective [and Regulatory] Services under
12 Subchapter I, Chapter 48, Human Resources Code, or Subchapter B,
13 Chapter 261, Family Code, after compliance with the procedures
14 established under Subchapter I, Chapter 48, Human Resources Code,
15 the Department of Aging and Disability Services [~~department~~] shall
16 record the information in the employee misconduct registry in
17 accordance with Section 253.007.

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

20 Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL
21 SEARCH. (a) Before a facility [~~or a person exempt from licensing~~
22 ~~under Section 142.003(a)(19)~~] may hire an employee, the facility
23 [~~or person~~] shall search the employee misconduct registry under
24 this chapter and the nurse aide registry maintained under Chapter
25 250 as required by the Omnibus Budget Reconciliation Act of 1987
26 (Pub. L. No. 100-203) to determine whether the applicant for
27 employment is designated in either registry as having abused,

1 neglected, or exploited a resident or consumer of a facility or an
2 individual receiving services from a facility [~~or from a person~~
3 ~~exempt from licensing under Section 142.003(a)(19)~~].

4 (b) A facility [~~or a person exempt from licensing under~~
5 ~~Section 142.003(a)(19)~~] may not employ a person who is listed in
6 either registry as having abused, neglected, or exploited a
7 resident or consumer of a facility or an individual receiving
8 services from a facility. This subsection does not prohibit a
9 facility from employing a person whose only record of reportable
10 conduct included in the registry is pending a final determination
11 [~~or from a person exempt from licensing under Section~~
12 ~~142.003(a)(19)~~].

13 (c) In addition to the initial verification of
14 employability, a facility shall annually search the employee
15 misconduct registry and the nurse aide registry maintained under
16 Chapter 250 to determine whether any employee of the facility is
17 designated in either registry as having abused, neglected, or
18 exploited a resident or consumer of a facility or an individual
19 receiving services from a facility.

20 SECTION 12. Section 253.009, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 253.009. NOTIFICATION. (a) Each facility [~~and each~~
23 ~~person exempt from licensing under Section 142.003(a)(19)~~] shall
24 notify its employees in a manner prescribed by the Department of
25 Aging and Disability Services [~~department~~]:

26 (1) about the employee misconduct registry; [~~and~~]
27 (2) that an employee may not be employed if the

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1 employee is listed in the registry after a final determination; and
2 (3) that an employee listed in the registry pending a
3 final determination may continue to be employed.

4 (b) The executive commissioner [department] shall adopt
5 rules to implement this section.

6 SECTION 13. Section 253.010, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 253.010. REMOVAL FROM REGISTRY. The Department of
9 Aging and Disability Services [department] may remove a person from
10 the employee misconduct registry if, after receiving a written
11 request from the person, the department determines that the person
12 does not meet the requirements for inclusion in the employee
13 misconduct registry.

14 SECTION 14. Section 48.403, Human Resources Code, is
15 amended to read as follows:

16 Sec. 48.403. FINDING. After an investigation and following
17 the procedures of this subchapter, if the department confirms or
18 validates the occurrence of reportable conduct by an employee, the
19 department shall immediately forward the finding to the [Texas]
20 Department of Aging and Disability [Human] Services to record the
21 reportable conduct in the employee misconduct registry under
22 Section 253.007, Health and Safety Code.

23 SECTION 15. Section 48.404(c), Human Resources Code, is
24 amended to read as follows:

25 (c) If the employee notified of the violation accepts the
26 finding of the department or fails to timely respond to the notice,
27 the executive director or the executive director's designee shall

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1 issue an order approving the finding and ordering that the
2 department's findings be forwarded to the [Texas] Department of
3 Aging and Disability [Human] Services to be recorded in the
4 employee misconduct registry under Section 253.007, Health and
5 Safety Code.

6 SECTION 16. Sections 48.406(b) and (d), Human Resources
7 Code, are amended to read as follows:

8 (b) Not later than the 30th day after the date the decision
9 becomes final as provided by Chapter 2001, Government Code, the
10 employee may file a petition for judicial review contesting the
11 finding of the reportable conduct. If the employee does not request
12 judicial review of the finding, the department shall send a record
13 of the department's findings to the [Texas] Department of Aging and
14 Disability [Human] Services to record in the employee misconduct
15 registry under Section 253.007, Health and Safety Code.

16 (d) If the court sustains the finding of the occurrence of
17 the reportable conduct, the department shall forward the finding of
18 reportable conduct to the [Texas] Department of Aging and
19 Disability [Human] Services to record the reportable conduct in the
20 employee misconduct registry under Section 253.007, Health and
21 Safety Code.

22 SECTION 17. Section 48.408, Human Resources Code, is
23 amended to read as follows:

24 Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT
25 REGISTRY. (a) When the department forwards a finding of reportable
26 conduct to the [Texas] Department of Aging and Disability [Human]
27 Services for recording in the employee misconduct registry, the

1 department shall provide the employee's name, the employee's
2 address, the employee's social security number, if available, the
3 name of the agency, the address of the agency, the date the
4 reportable conduct occurred, and a description of the reportable
5 conduct.

6 (b) If a governmental agency of another state or the federal
7 government finds that an employee has committed an act that
8 constitutes reportable conduct, the department may send to the
9 [Texas] Department of Aging and Disability [Human] Services, for
10 recording in the employee misconduct registry, the employee's name,
11 the employee's address, the employee's social security number, if
12 available, the name of the agency, the address of the agency, the
13 date of the act, and a description of the act.

14 SECTION 18. Subchapter B, Chapter 261, Family Code, is
15 amended by adding Section 261.1035 to read as follows:

16 Sec. 261.1035. RECORD FILED WITH DEPARTMENT OF AGING AND
17 DISABILITY SERVICES. (a) In this section:

18 (1) "Employee" has the meaning assigned by Section
19 253.001, Health and Safety Code.

20 (2) "Facility" has the meaning assigned by Section
21 253.001, Health and Safety Code.

22 (3) "Reportable conduct" has the meaning assigned by
23 Section 253.001, Health and Safety Code.

24 (b) If an investigation under this chapter results in a
25 finding by a regulatory agency that regulates, contracts with,
26 operates, or oversees a facility that an employee of the facility
27 has committed reportable conduct, the agency shall comply with the

1 procedures established under Subchapter I, Chapter 48, Human
2 Resources Code, or Chapter 253, Health and Safety Code, as
3 applicable, to report the reportable conduct and include the
4 information in the employee misconduct registry under Chapter 253,
5 Health and Safety Code.

6 SECTION 19. The changes in law made by this Act apply only
7 to reportable conduct that occurs on or after the effective date of
8 this Act.

9 SECTION 20. As soon as practicable after the effective date
10 of this Act, the executive commissioner of the Health and Human
11 Services Commission shall adopt the rules necessary to implement
12 the changes in law made by this Act.

13 SECTION 21. This Act takes effect immediately if it
14 receives a vote of two-thirds of all the members elected to each
15 house, as provided by Section 39, Article III, Texas Constitution.
16 If this Act does not receive the vote necessary for immediate
17 effect, this Act takes effect September 1, 2009.