

## **BILL ANALYSIS**

Senate Research Center  
76R10751 MCK-D

C.S.S.B. 967  
By: Zaffirini  
Human Services  
4/7/1999  
Committee Report (Substituted)

### **DIGEST**

Currently, the Texas Department of Human Services (department) is charged with the regulation of a variety of long-term care facilities, in addition to nursing homes. The rapid growth of adult day care facilities, intermediate care facilities for the mentally retarded and personal care homes has produced a proliferation of uncredentialed employees providing “nurse aide-like” direct care services. Although the existing nurse aide registry at the department tracks findings of abuse, neglect, or exploitation by nurse aides against nursing home residents, no such registry exists to track similar acts by uncredentialed employees of other long-term care facilities under department regulation. This bill would create a registry for acts of misconduct by certain employees of facilities licensed by the department and authorize its use in investigating complaints against facilities licensed by the department.

### **PURPOSE**

As proposed, C.S.S.B. 967 creates a registry for acts of misconduct by certain employees of facilities licensed by the Texas Department of Human Services.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Department of Human Services in SECTION 1 (Section 253.006, Title 4B, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 4B, Health and Safety Code, by adding Chapter 253, as follows:

#### **CHAPTER 253. EMPLOYEE MISCONDUCT REGISTRY**

Sec. 253.001. DEFINITIONS. Defines “commissioner,” “department,” “employee,” and “facility.”

Sec. 253.002. INVESTIGATION BY DEPARTMENT. Requires the Texas Department of Human Services (department) to investigate reports regarding acts of abuse, neglect, exploitation, or misappropriation by an employee of a facility licensed by the department against a resident or consumer of the facility.

Sec. 253.003. DETERMINATION; NOTICE. Requires the department to give written notice of findings, discovered during an investigation of an employee, which must include a brief summary of the department’s findings and a statement of a person’s right to a hearing on the occurrence of the misconduct. Authorizes an employee under investigation to accept the determination of the department or make a written request for a hearing on that determination, no later than the 30th day after receiving a notice of findings. Requires the commissioner of human services or designee (commissioner) to issue an order, upon an employee’s acceptance of a determination or untimely response, approving the determination and ordering that the incident of misconduct be recorded in the registry under Section 253.007.

Sec. 253.004. HEARING; ORDER. Requires the department, upon receiving an employee’s request for a hearing, to set a hearing, give written notice of the hearing to the employee, and designate a hearings examiner. Requires the hearings examiner to make findings of fact and conclusions of law and promptly issue a proposal for a decision to the commissioner. Authorizes the commissioner to find, by order, that an act of misconduct has occurred and requires the

commissioner to issue an order approving the determination and ordering that the incident of misconduct be recorded in the registry under Section 253.007.

Sec. 253.005. NOTICE; JUDICIAL REVIEW. Requires the department to give notice of an order under Section 253.004, which must include certain items, to an employee alleged to have committed an act of misconduct. Authorizes an employee to file for a petition for judicial review contesting the finding of an act of misconduct no later than 30 days after the decision becomes final as provided by Chapter 2001, Government Code. Provides that judicial review of the order is instituted by filing a petition as provided by Chapter 2001G, Government Code, and is under the substantial evidence rule. Requires the court to keep an incident listed in the registry if a court sustains the finding. Requires the department to remove an incident from the registry if a court does not sustain a finding of an act of misconduct.

Sec. 253.006. INFORMAL PROCEEDINGS. Requires the department to adopt, by rule, procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

Sec. 253.007. EMPLOYEE MISCONDUCT REGISTRY. Requires the department to make a record of an employee's name, address, social security number, name and address of the facility, and the date and description of the misconduct, if an employee is found to have committed an act of misconduct. Authorizes the department to make a record in the employee misconduct registry if an agency of another state or the federal government finds an employee has committed an act of misconduct. Requires the department to make the registry available to the public.

Sec. 253.008. VERIFICATION OF EMPLOYABILITY. Requires a facility to reference the employee misconduct registry and the aide registry maintained under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100 - 203) prior to hiring an employee and prohibits a facility from employing a person who is listed in either registry.

SECTION 2. Effective date: September 1, 1999. Provides this Act applies only to acts of misconduct that occur after September 1, 1999.

SECTION 3. Emergency clause.

## **SUMMARY OF COMMITTEE CHANGES**

### SECTION 1.

Amends Section 253.001, Health and Safety Code, to redefine "employee."

Amends Section 253.002, Health and Safety Code, to require the department to investigate reports regarding acts of abuse, neglect, exploitation, or misappropriation by an employee of a facility licensed by the department against a resident or consumer of the facility.

Amends Section 253.003, Health and Safety Code, to authorize an employee to accept a determination of the department not later than the 30th day after the date on which the notice was received. Makes conforming changes.

Amends Section 253.005, Health and Safety Code, to authorize an employee to file a petition for judicial review not later than the 30th day after a decision becomes final.

Amends Section 253.007, Health and Safety Code, to authorize the department to make a record in the employee misconduct registry if an agency of another state or the federal government finds an employee has committed an act of misconduct.

Amends Section 253.008, Health and Safety Code, to require a facility to reference the employee misconduct registry and the aide registry maintained under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100 - 203) prior to hiring an employee and prohibits a facility from employing a person who is listed in either registry.

SECTION 3.

Deletes text previously designated as SECTION 3.