

BILL ANALYSIS

Senate Research Center

H.B. 2224
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Heath & Human Services
5/20/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Certain child-care providers do not require their attendants to follow the directions of a child's physician or health care provider. While certain acts would be an offense in other sections of code, current law does not address minimum standards in this area related to child-care facilities.

H.B. 2224 amends current law relating to the minimum standards for licensed child-care facilities and registered family homes and retaliation against certain employees of child-care facilities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Requires that this Act be known as Paisley's Law.

SECTION 2. Amends Section 42.042(e), Human Resources Code, to require the Department of Family and Protective Services to promulgate minimum standards that apply to licensed child-care facilities and to registered family homes covered by this chapter and that will perform certain actions, including ensuring that a child-care facility or registered family home follows the directions of a child's physician or other health care provider in providing specialized medical assistance required by the child.

SECTION 3. Amends Subchapter C, Chapter 42, Human Resources Code, by adding Section 42.064, as follows:

Sec. 42.064. RETALIATION AGAINST EMPLOYEES PROHIBITED. (a) Defines "employee."

(b) Provides that an employee has a cause of action against a child-care facility, or the owner or another employee of a child-care facility, that suspends or terminates the employment of the person or otherwise disciplines, discriminates against, or retaliates against the employee for reporting to the employee's supervisor, an administrator of the child-care facility, a state regulatory agency, or a law enforcement agency a violation of law, including a violation of this chapter or a rule adopted under this chapter, or initiating or cooperating in any investigation or proceeding of a governmental entity relating to care, services, or conditions at the child-care facility.

(c) Authorizes the petitioner to recover the greater of \$1,000 or actual damages, including damages for mental anguish even if an injury other than mental anguish is not shown, and damages for lost wages if the petitioner's employment was suspended or terminated, exemplary damages, court costs, and reasonable attorney's fees.

(d) Entitles a person whose employment is suspended or terminated, in addition to the amounts that may be recovered under Subsection (c), to appropriate injunctive

relief, including, if applicable, reinstatement in the person's former position and reinstatement of lost fringe benefits or seniority rights.

(e) Requires the petitioner, not later than the second anniversary of the date the person's employment is suspended or terminated, or the person is otherwise subjected to discipline, discrimination, or retaliation, to bring suit or notify the Texas Workforce Commission (TWC) of the petitioner's intent to sue under this section. Requires a petitioner who notifies TWC under this subsection to bring suit not later than the 90th day after the date the notice is delivered to TWC. Requires TWC, on receipt of the notice, to notify the child-care facility of the petitioner's intent to bring suit under this section.

(f) Provides that the petitioner has the burden of proof in a suit brought under this section, except that there is a rebuttable presumption that the person's employment was suspended or terminated or the person was otherwise subjected to discipline, discrimination, or retaliation for reporting abuse or neglect if the adverse action was taken on or before the 60th day after the date the person reported in good faith.

(g) Authorizes a suit under this section to be brought in the district court of the county in which the petitioner resides, the petitioner was employed by the defendant, or the defendant conducts business.

(h) Requires each child-care facility to require each employee of the child-care facility, as a condition of employment with the child-care facility, to sign a statement that the employee understands the employee's rights under this section.

SECTION 4. Makes application of Section 42.064, Human Resources Code, as added by this Act, prospective.

SECTION 5. Effective date: September 1, 2009.

SECTION 6. Effective date: upon passage or September 1, 2009.