

## **BILL ANALYSIS**

Senate Research Center  
82R1167 AJZ-F

S.B. 43  
By: Zaffirini  
State Affairs  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

This bill closes a loophole in existing law created by S.B. 210, 73rd Legislature, Regular Session, 1993, which was part of a package of eight bills related to the mental health statutes, to ensure that all entities with knowledge of abuses in the mental health care system are held accountable.

Under existing law, a psychiatric institution is not held liable for an employee's sexual exploitation of a patient unless the institution had "reason to believe" that the abuse would occur. Because the statute describes the victim as "the person" instead of "a" or "any" person, "reason to believe" can only be established if the employee abused the same person twice. Therefore, a mental health provider could continue to abuse different patients into perpetuity without any liability assigned to the perpetrator's employer as long as the provider does not victimize the same patient twice.

Specifically, the legislation cleans up language in the Civil Practices and Remedies Code regarding the liability of an employer of a mental health services provider in order to reflect the intent of the 73rd Texas Legislature and the Senate Health and Human Services Committee.

As proposed, S.B. 43 amends current law relating to the civil liability of an employer or former employer of a mental health services provider who engages in sexual exploitation of a patient or former patient.

### **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. Amends Sections 81.003(a) and (b), Civil Practice and Remedies Code, as follows:

(a) Provides that an employer of a mental health services provider (MHSP) is liable to a patient or former patient of the MHSP for damages if the patient or former patient is injured as described by Section 81.002 (Sexual Exploitation Cause of Action) and the employer fails to make certain inquiries or knows or has reason to know that the MHSP engaged in sexual exploitation of a patient or former patient, rather than engaged in the sexual exploitation of the patient or former patient, and the employer failed to report the suspected sexual exploitation as required by Section 81.006 (Duty to Report) or take necessary action to prevent or stop the sexual exploitation by the MHSP.

(b) Provides that an employer or former employer of an MHSP is liable to a patient or former patient of the MHSP for damages if the patient or former patient is injured as described by Section 81.002 and the employer or former employer knows of the occurrence of sexual exploitation by the MHSP of a patient or former patient, rather than knows of the occurrence of the sexual exploitation by the MHSP of the patient or former patient, receives certain requests, and fails to disclose the occurrence of the sexual exploitation.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2011.